

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF PUERTO RICO

3 In Re:) Docket No. 3:17-BK-3283 (LTS)

4)

5) PROMESA Title III

6 The Financial Oversight and)

7 Management Board for)

8 Puerto Rico,) (Jointly Administered)

9)

10 *as representative of*)

11)

12 The Commonwealth of)

13 Puerto Rico, *et al.*) April 28, 2021

14)

15 Debtors,)

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12 In Re:) Docket No. 3:17-BK-4780 (LTS)

13)

14) PROMESA Title III

15 The Financial Oversight and)

16 Management Board for)

17 Puerto Rico,) (Jointly Administered)

18)

19 *as representative of*)

20)

21 The Puerto Rico Electric)

22 Power Authority,)

23)

24 Debtors,)

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3 Autoridad de Energia) Docket No. 3:20-AP-00453 (LTS)
4 Electrica de Puerto Rico,)
5) *in 3:17-BK-3283 (LTS)*
6)
7 Plaintiff,)
8)
9 v.)
10)
11 Vitol Inc. and)
12 Vitol S.A., et al.,)
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15)
16 Defendants.)
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The Financial Oversight and) Docket No. 3:20-AP-00003 (LTS)
Management Board for)
Puerto Rico,) *in 3:17-BK-3283 (LTS)*
Plaintiff,)
v.)
Ambac Assurance)
Corporation, et al.,)
Defendants.)

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3 The Financial Oversight and) Docket No. 3:20-AP-00004 (LTS)
Management Board for)
4 Puerto Rico,) *in 3:17-BK-3283 (LTS)*
)
5 Plaintiff,)
)
6 v.)
)
7 Ambac Assurance)
Corporation, et al.,)
8)
)
9)
Defendants.)

10
11 The Financial Oversight and) Docket No. 3:20-AP-00005 (LTS)
12 Management Board for)
Puerto Rico,) *in 3:17-BK-3283 (LTS)*
13)
Plaintiff,)
14)
v.)
15)
Ambac Assurance)
16 Corporation, et al.,)
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18 Defendants.)

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Rafael Hernandez Montanez) Docket No. 3:20-AP-00042 (LTS)
)
) in 3:17-BK-3283 (LTS)
Plaintiff,)
)
v.)
)
Pedro Pierluisi Urrutia,)
7 et al.,)
)
)
Defendants.)

OMNIBUS HEARING
BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT COURT JUDGE
AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING TELEPHONICALLY

For The Commonwealth
of Puerto Rico, *et al.*: Mr. Martin J. Bienenstock, PHV
Mr. Brian S. Rosen, PHV
Mr. Paul Possinger, PHV
Mr. Michael Firestein, PHV
Ms. Margaret Dale, PHV
Mr. Elliot Stevens, PHV
Ms. Laura Stafford, PHV

1	APPEARANCES, Continued:	
2		
3	For Puerto Rico Fiscal	
4	Agency and Financial	
5	Advisory Authority:	Mr. Luis C. Marini Biaggi, Esq. Mr. Peter Friedman, PHV
6	For The Official	
7	Committee of Unsecured	
8	Creditors of all	
9	Title III Debtors:	Mr. Luc A. Despins, PHV Mr. Nicholas A. Bassett, PHV
10	For The Official	
11	Committee of Retired	
12	Employees:	Ms. Melissa Root, PHV Mr. Landon Raiford, PHV
13	For Vitol, Inc., and	
14	Vitol S.A.:	Mr. Alexander L. Kaplan, PHV
15	For M Solar and	
16	YFN Yabucoa:	Mr. Fernando E. Agrait, Esq.
17	For Peter Hein:	Mr. Peter Hein, Pro Se
18	For AmeriNational	
19	Community Services:	Mr. Nayuan Zouairaban, Esq.
20	For UTIER and SREAEE:	Ms. Jessica Mendez Colberg, Esq.
21	For Cantor-Katz	
22	Collateral Monitor:	Mr. Peter Amend, PHV
23	For Assured:	Mr. William J. Natbony, PHV
24	For Financial Guaranty	
25	Insurance Company:	Mr. Martin A. Sosland, PHV
	For Ambac Assurance	
	Corporation:	Ms. Atara Miller, PHV

1 APPEARANCES, Continued:
2

3 For National Public
4 Finance Guarantee
5 Corporation:

Mr. Robert Berezin, PHV

6 For Whitefish Energy
7 Holdings:

Ms. Carmen Conde Torres, Esq.

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1	I N D E X	
2	WITNESSES:	PAGE
3	None.	
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5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 April 28, 2021

3 At or about 9:29 AM

4 * * *

5 THE COURT: Good morning. This is Judge Swain
6 speaking.

7 MS. NG: Good morning, Your Honor. This is Lisa Ng,
8 your courtroom deputy for the Southern District. Everyone is
9 here.

10 THE COURT: Thank you very much.

11 Ms. Tacoronte, would you please call the case?

12 COURTROOM DEPUTY: Good morning, Your Honor.

13 The United States District Court for the District of
14 Puerto Rico is now in session. The Honorable Laura Taylor
15 Swain presiding. Also present, the Honorable Magistrate Judge
16 Judith Dein. God save the United States of America and this
17 Honorable Court.

18 Case No. 2017-BR-3283, *In re: The Financial*
19 *Oversight and Management Board for Puerto Rico, as*
20 *representative of the Commonwealth of Puerto Rico, et al., for*
21 *Omnibus Hearing.*

22 THE COURT: Thank you, Ms. Tacoronte.

23 And buenos dias. Good morning. Welcome, counsel,
24 parties in interest, and members of the public and press.
25 Today's telephonic Omnibus Hearing is occurring in what

1 continue to be challenging times for all stakeholders in these
2 cases, including the people of Puerto Rico.

3 To ensure the orderly operation of today's telephonic
4 hearing, all parties on the line must mute their phones when
5 they are not speaking. If you are accessing these proceedings
6 on a computer, please be sure to select "mute" on both the
7 Court Solutions dashboard and on your phone. When you need to
8 speak, you must unmute on both the dashboard and the phone.

9 I remind everyone that consistent with court and
10 judicial conference policies and the orders that have been
11 issued, no recording or retransmission of the hearing is
12 permitted by any person, including but not limited to the
13 parties, members of the public, or the press. Violations of
14 this rule may be punished with sanctions.

15 I will be calling on each speaker during the
16 proceedings. When I do, please identify yourself by name for
17 clarity of the record. After the speakers listed on the
18 Agenda for each of today's matters have spoken, I may provide
19 an opportunity for other parties in interest to address
20 briefly any issues raised during the course of the
21 presentations that require further remarks.

22 If you wish to be heard under these circumstances,
23 please state your name clearly at the appropriate time. Don't
24 just use the wave feature on the Court Solutions dashboard. I
25 will call on the speakers if more than one person wishes to be

1 heard.

2 Please don't interrupt each other or me during the
3 hearing. If we interrupt each other, it is difficult to
4 create an accurate transcript. But having said that, I
5 apologize in advance for breaking this rule, as I may
6 interrupt if I have questions or if you go beyond your
7 allotted time. If anyone has difficulty hearing me or another
8 participant, please say something immediately.

9 The Agenda, which was filed as docket entry no. 16615
10 in case no. 17-3283 is available to the public at no cost on
11 Prime Clerk for those who are interested. I encourage each
12 speaker to keep track of his or her own time. The Court will
13 also be keeping track of the time and will alert each speaker
14 when there are two minutes remaining with one buzz, and when
15 time is up, with two buzzes. Here is an example of the buzz
16 sound.

17 (Sound played.)

18 THE COURT: If your allocation is two minutes or
19 less, you will just hear the final buzzes.

20 If we need to take a break, I will direct everyone to
21 disconnect and dial back in at a specified time. Our timing
22 today is, for this morning's session, which will end at 11:45
23 AM, and then an afternoon session beginning at 2:15 PM and
24 going until 5:00 PM. We will then resume as necessary
25 tomorrow morning, beginning at 9:30 AM. All of these times

1 are in Atlantic Standard Time.

2 As usual, the first Agenda item is status reports
3 from the Oversight Board and AAFAF. As I requested in the
4 Procedures Order, these reports have been made in writing in
5 advance of this telephonic hearing and are available on the
6 public docket at docket entry nos. 16614 and 16616 in Case No.
7 17-3283. I thank the Oversight Board and AAFAF for the care
8 and detail reflected in their comprehensive reports. I do not
9 have further questions for the parties in connection with
10 these reports.

11 I first call on the representative of the Oversight
12 Board to ask whether they wish to make any further remarks.

13 MR. BIENENSTOCK: Thank you. Thank you, Your Honor.
14 This is Martin Bienenstock of Proskauer Rose, LLP, for the
15 Oversight Board.

16 No, we don't have any additions to our report.

17 THE COURT: Thank you, Mr. Bienenstock.

18 And Mr. Marini of AAFAF?

19 MR. MARINI BIAGGI: Good morning, Your Honor. This
20 is Luis Marini for AAFAF.

21 We don't have anything else to add as well, Your
22 Honor.

23 THE COURT: Thank you, Mr. Marini.

24 Do any other counsel who are on the line wish to make
25 any comment or question in response to the reports? I will

1 wait 30 seconds, and if you wish to make a comment, state your
2 name clearly and then I will call on you.

3 And remember, if you want to be heard, you have to
4 unmute your phone and unmute your dashboard.

5 (No response.)

6 THE COURT: Very well. There are no further
7 comments, and so we can turn to Section II of the Agenda, the
8 contested matters.

9 Before I ask counsel to begin presenting on the
10 contested matters in Section II of the Agenda, I have some
11 preliminary remarks concerning certain of the motions so that
12 everyone involved can begin to think about issues that are at
13 the top of my mind and orient their arguments accordingly.
14 And these remarks are not necessarily in the order in which
15 the contested matters will come up, and so I'll just be clear
16 about what I'm referring to.

17 So, first, with respect to the Motion to Schedule the
18 Disclosure Statement Hearing and Implement Related Deadlines
19 and Relief, I am inclined to agree with certain of the parties
20 that the Oversight Board's proposed notice period for
21 objections to the Disclosure Statement is too short. Instead,
22 the notice period should comply with the 28-day requirement of
23 Rule 2002(b).

24 While certain parties have had prior notice of and
25 taken the opportunity to study some of the content of the

1 proposed Disclosure Statement, there are potentially many
2 interested parties who have not been living and breathing
3 these issues for months or years, and the Disclosure Statement
4 and associated exhibits are lengthy and complex.

5 Accordingly, my intention, after careful review of
6 the pleadings and subject to the arguments presented today is
7 to set the objection deadline such that parties receive 28
8 days notice of the objection deadline after the Disclosure
9 Statement approval motion is filed.

10 The Oversight Board's reply would be due two weeks
11 later, and the hearing would be held on Tuesday, June 29th,
12 2021, if the motion is filed promptly and we can adhere to the
13 timetable that I have outlined.

14 As to the provisions of docket entry no. 16507, which
15 is the proposed order and exhibits, from the provisions
16 concerning the Disclosure Statement depository, I am inclined
17 to strike paragraph number seven, which is titled, No Warranty
18 of Accuracy, as I see no basis to prejudge the intentions of
19 the "Producing Parties."

20 If I am misunderstanding the import of that paragraph
21 and the Oversight Board's goal is to say that the documents in
22 the Disclosure Statement depository are authentic, but that
23 the Producing Parties are not warranting suitability or
24 accuracy of the documents or information for purposes other
25 than objecting to the Disclosure Statement, then the Board may

1 propose alternative language for consideration. And I also
2 note that the term "Producing Parties" does not appear to be
3 defined anywhere in the motion papers order or exhibits to
4 that order.

5 With respect to the proposed notice, the Court shares
6 some of the concerns raised by certain objecting parties about
7 the burden of serving the long list of parties on Exhibit B-1
8 to the Amended Proposed Order. Section 2.I and 2.K of the
9 Case Management Order ordinarily allow parties to serve most
10 parties via CM/ECF electronic notification with the exception
11 of the U.S. Trustee. So to the extent there's a reason to
12 depart from that practice here, the Oversight Board should
13 explain in its remarks what that reason is. Otherwise, the
14 Court would expect that we would follow the CMO practice for
15 giving notice.

16 Finally, with respect to the Disclosure Statement
17 scheduling motion, in order to enable the Court to plan
18 appropriately for speakers at the telephonic hearing on the
19 Disclosure Statement, and to help to ensure that any oral
20 remarks at that hearing are pertinent, the Court proposes to
21 add a provision to the notice stating that only those
22 objectors who file timely objections will be entitled to make
23 oral remarks at the hearing.

24 So those are my preliminary remarks regarding the
25 Disclosure Statement scheduling motion. I now turn to the

1 Motion to Lift the Stay applicable to the revenue bond
2 adversary proceedings.

3 I'm inclined to deny both the Oversight Board's
4 motion and the UCC's cross-motion. The 2020 summary judgment
5 motion practice is still pending, and issues within that
6 motion practice are closely intertwined with additional issues
7 that the Oversight Board and the UCC have now asked to
8 litigate.

9 The rationale for prioritizing resolution of the
10 so-called gateway issues before others is substantially
11 unchanged from the rationale underlying the imposition of the
12 litigation stay in connection with the March 2020 Omnibus
13 Hearing. And, critically, at least at this point and subject
14 to oral argument, the Court does not believe that the
15 Oversight Board's briefs have provided a compelling
16 explanation as to why granting this motion is material to the
17 Board's ability to propose and confirm a plan of adjustment.
18 And without a clear picture of that rationale, it seems to me
19 that the Oversight Board's request can't overcome the clear,
20 practical issues that weigh against granting the motion.

21 First, the briefing of the issues in the new summary
22 judgment motion practice would have to assume outcomes to
23 issues that are still pending in the 2020 motion practice.
24 Not only will that require parties to inefficiently repeat
25 arguments they've laid out before, but the parties will be

1 | arguing from incompatible foundational assumptions that will
2 | necessarily be affected once the Court is in a position to
3 | resolve the 2020 summary judgment disputes. And that
4 | resolution may moot entire disputes or result in the need for
5 | even more briefing in light of shifting legal landscapes.

6 | Second, the Court's resources are finite, and the
7 | Oversight Board has asked for the Disclosure Statement and
8 | plan confirmation process to continue in a swift manner.
9 | Additional substantial summary judgment motion practice
10 | addressing more than a dozen legal theories across three
11 | adversary proceedings, in combination with the many other
12 | matters currently pending or soon to be pending, is not
13 | compatible with a substantial Disclosure Statement hearing in
14 | the early summer and the proposed Plan confirmation hearing in
15 | the fall.

16 | So when these motions are called for oral argument,
17 | the proponents should focus their arguments. If they wish to
18 | continue to press this lifting of the litigation stay motion
19 | practice, they should focus on making clear to me why they
20 | believe it makes sense to move on with additional summary
21 | judgment motions in light of my perception of the
22 | circumstances as I've just outlined them.

23 | And, finally, with respect to the Vitol and PREPA
24 | motions for summary judgment, the Court has read all the
25 | briefs, and, at this point, perceives the key issues to be, in

1 this order, first, whether the VIC was ever an alter ego of
2 VSA; second, whether VSA's conviction falls outside the scope
3 of Law 458; third, whether and to what extent Law 458 applies;
4 and fourth, whether any of the fuel contracts are void for
5 deceit.

6 Accordingly, the Court invites the parties to focus
7 their arguments on those issues, particularly on the threshold
8 issue of whether VIC was ever an alter ego of VSA, and any
9 arguments you wish to make to persuade me that the issues I
10 identified are not, in fact, the keys to resolution of the
11 motion practice.

12 I also note with respect to the Vitol and PREPA
13 motions, that the briefing was not entirely clear as to which
14 arguments presented in the motions correspond to which causes
15 of action, counterclaims, and affirmative defenses. So, to
16 the extent possible in your oral arguments, please make those
17 connections clear by referring to specific pleadings and
18 causes of action.

19 Thank you all for bearing with these lengthy
20 preliminary remarks, but I am hopeful that they will be
21 helpful when we get to oral argument on those motions.

22 So now I turn to Item 1 of the contested matters
23 Agenda, and that is PREPA's Omnibus Motion for an order
24 approving its rejection of certain power purchase and
25 operating agreements, which is docket entry no. 15178 in case

1 no. 17-3283.

2 I have listed first up for speaking Elliot Stevens on
3 behalf of PREPA for eight minutes. Mr. Stevens.

4 MR. STEVENS: Good morning, Your Honor. This is
5 Elliot Stevens of the Oversight Board -- appearing on behalf
6 of the Oversight Board for Puerto Rico as PREPA'S
7 representative in PREPA'S Title III case.

8 As Your Honor identified, this is PREPA's motion to
9 reject at this time two non-operational power purchase and
10 operating agreements, one with YFN Yabucoa -- that's
11 Y-a-b-u-c-o-a, YFN Yabucoa Solar, LLC, and another was M Solar
12 Generating, LLC. Both of these parties have objected to the
13 motion, but for the reasons I'll discuss, we submit the Court
14 should overrule these objections and enter an order approving
15 PREPA's rejection of these contracts.

16 Your Honor, I'd like to briefly describe the facts
17 which are also set forth in our motion and in the accompanying
18 declaration of Fernando Padilla. Both of these PPOAs were
19 entered into by PREPA in 2012. Neither of them are
20 operational.

21 In early 2019, PREPA determined to renegotiate its
22 non-operational PPOAs, which were, among other things, above
23 market pricing of what was contained in them. As a result, in
24 early 2019 PREPA determined to renegotiate it's PPOAs with YFN
25 and with M Solar and engaged in negotiations with those

1 parties until about the middle of 2020.

2 These negotiations involved the parties delivering
3 proposals and counterproposals back and forth, looking at
4 markups of the PPOAs, and holding meetings to discuss pressing
5 issues and other technical issues. However, eventually, YFN's
6 final count proposal came back with pricing that was
7 approximately 20 percent higher than other renegotiated PPOAs
8 that PREPA had renegotiated with other parties. Similarly, M
9 Solar's proposal came back at a level 14 percent higher than
10 those parties.

11 As a result of this pricing difference, as well as
12 the fact that these contracts are not operational and thus
13 could not provide PREPA with power in the near term, PREPA
14 determined to seek their rejection.

15 Your Honor, in a moment I will discuss the objections
16 raised by the objecting parties, but first I'd just like to
17 lay out the legal standard which we submit applies here based
18 on this Court's precedent.

19 THE COURT: May I interrupt you for a second,
20 Mr. Stevens? I'd just like you to clarify the status of the
21 request to reject the Windmar PPOAs. Are you asking for those
22 PPOAs to be adjourned, or are you terminating your motion with
23 respect to those PPOAs?

24 MR. STEVENS: Certainly. Yes. Thank you, Your
25 Honor.

1 At this time, we're asking for this motion to be
2 adjourned with respect to the two outstanding PPOAs with
3 Windmar pending further negotiations with that party.

4 THE COURT: Thank you.

5 MR. STEVENS: Thank you, Your Honor.

6 So, yes, the legal standard we submit here as it
7 applies is the business judgment test. Your Honor, this test
8 requires that the debtor put forth a showing that rejection is
9 an exercise -- was made in the exercise of the debtor's sound
10 business judgment. It requires under article four some
11 rational justification as to why the debtors believe the
12 rejection will benefit the debtor and the debtor's estate.

13 Your Honor, with the high differential standard and
14 -- it essentially requires the Court to approve the motion
15 unless the Court were to determine PREPA had made its decision
16 out of bad faith, whim, caprice, or some gross abuse of
17 discretion.

18 Your Honor, we submit this test is clearly satisfied
19 here. As noted, PREPA renegotiated with these parties for
20 over a year. In the end, however, their pricing came back
21 substantially higher than other PPOA counterparties, and not
22 only that, the contracts are not able to provide PREPA with
23 power in the near term. None of these basic facts are I
24 understand disputed by the objectors, and, as a result, we
25 submit the business judgment test has been met.

1 I would like to briefly discuss the objectors'
2 arguments. We have had -- some of the discussions on these
3 parts can be found in our reply. First, YFN and M Solar argue
4 that the balance of the equities test rather than the business
5 judgment test apply to this motion. We would submit that this
6 is incorrect.

7 As Your Honor held less than a year ago in connection
8 with the assumption of the Ecoelectrica PPOA, the applicable
9 standard for a motion under Section 365 of the Bankruptcy Code
10 relating to a PPOA is the business judgment test. As Your
11 Honor held in that opinion, the cases applying the balance of
12 equities test, *Bildisco*, *Mirant*, *FirstEnergy*, the same cases
13 the objectors raised in their objections, involve facts far
14 from the ones here. They involve situations where a federal
15 regulator under a Federal Statute have either exclusive
16 jurisdiction of the case at court or a significant amount of
17 concurrent jurisdiction to determine certain things related to
18 these contracts, and where that Federal Statute would be in
19 some way undermined or contradicted by an unfettered exercise
20 of the debtors' rejection powers. As Your Honor determined in
21 the *Ecoelectrica* opinion, there is no similar Federal or even
22 Commonwealth regulatory scheme applicable to PPOAs that would
23 warrant the application of a balance of the equities test. We
24 submit that Your Honor was correct and that Your Honor should
25 follow that opinion and instruction.

1 Your Honor, YFN and M Solar also argue that even if
2 the business judgment test were to apply, that it is not met
3 here. That, among other things, YFN and M Solar argue that
4 PREPA didn't correctly weigh YFN and M Solar's profit margin;
5 PREPA did not properly consider its renewable energy targets
6 in Puerto Rico law, or the reasons why the PPOAs have been
7 delayed and non-operational.

8 If Your Honor would like to --

9 (sound played.)

10 We have substantial comments as to each of those
11 points. However, on a fundamental level, we would submit that
12 they simply misapprehend the business judgment test. As
13 noted, the test is highly differential. It's meant to be a
14 summary proceeding where the only real issue is whether the
15 debtor has presented it made its decision as an exercise of
16 sound business judgment. It does not have to show it's the
17 best decision ever. It does not have to show it's a great
18 decision, or that everybody else would agree with it, just
19 that it made a rational decision supported by rational
20 reasons.

21 Your Honor, we submit that PREPA has made that case
22 as found in the Padilla declaration, and that it's not
23 controverted, PREPA renegotiated with these parties for over a
24 year. The pricing came back higher than other renegotiated
25 PPOAs. And these contracts cannot provide power in the near

1 term. We submit that that case meets the business judgment
2 test and that the objections should, therefore, be overruled.

3 Finally, Your Honor, YFN and M Solar argue that the
4 rejection of these contracts has to be approved by PREB before
5 being valid. And, as a result, this motion is unripe until
6 PREB approved.

7 To put it briefly, Your Honor, in our responses that
8 are more fully laid out in the reply, we submit this is wrong
9 for at least three reasons. First, we submit that Puerto Rico
10 law does not require PREB to approve the rejection of the
11 contract. Objections don't put forward any statutes stating
12 that PREB must approve the rejection of a contract as distinct
13 from the approval of a new contract.

14 As a result, we submit there is no such requirement
15 here. Moreover, we would submit even if such a requirement
16 existed, it would be preempted by section 365 of the
17 Bankruptcy Code.

18 Perhaps most fundamentally, however, even if such
19 approval had existed and they were not preempted, we would
20 still submit the motion isn't ripe. First Circuit
21 jurisprudence such as the *Algonquin Gas Transmission* case we
22 cite in our reply brief, it is clear that a challenge to one
23 regulatory --

24 (Sound played.)

25 MR. STEVENS: May I finish my sentence, Your Honor?

1 THE COURT: Yes.

2 MR. STEVENS: Thank you, Your Honor.

3 First Circuit jurisprudence is clear the Court can
4 adjudicate challenges to one regulatory challenge, even while
5 others are pending, as long as it removes an ultimate barrier
6 to the approval of projects. We submit that applies here.

7 Unless the Court has further questions, I would turn
8 over the virtual microphone.

9 THE COURT: Thank you, Mr. Stevens.

10 Now we'll hear from counsel from M Solar and YFN
11 Yabucoa, and that is Mr. Agrait, who I have down for ten
12 minutes.

13 MR. AGRAIT: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. AGRAIT: Fernando Agrait for M Solar and YFN
16 Yabucoa Solar.

17 Both cases refer to non-operating PPOAs that have
18 been counter rejected by PREPA. The real issue before this
19 Court is not whether a debtor in bankruptcy has the right to
20 reject the contract. The real issue is what does a particular
21 debtor, in this case PREPA, must -- or what step has to take
22 for exercising the right to reject. In other words, what
23 procedures PREPA must internally follow to decide whether to
24 reject a contract in compliance with its own law and the
25 public policies of the Commonwealth.

1 Until Law 57 of 2014 was approved, the answer to this
2 question could be very simple. Has PREPA Board of Directors
3 decided the policies, the terms, the prices, and decided
4 whether to reject the contract. That same provides
5 unilateral power of PREPA ceased to exist in 2014. Now, under
6 both Law 57 of 2014 and Law 17 of 2019, the internal processes
7 of PREPA are shared by its own Board of Directors and the
8 Puerto Rico Energy Bureau. Now, PREPA, to decide to reject
9 the contract and to predetermine the terms under which it
10 would assume and not reject has to obtain both its Board of
11 Directors' and PREB's consent. This is before going to the
12 bankruptcy court and notifying a rejection.

13 THE COURT: Mr. Agrait, I understand PREPA to agree
14 with you as to PREB's role in authorizing entering into a
15 contract. However, it has been argued this morning, and in
16 the brief, that nothing in Puerto Rico law gives PREB the
17 authority to play a role in PREPA's decision to reject or
18 terminate a contract.

19 Is there a specific provision of these laws that
20 addresses the termination of a previously approved contract?

21 MR. AGRAIT: Yes, Your Honor. What happens is that
22 once a contract is in existence, any alteration to that
23 contract must be equitable in terms of compliance with Law 17
24 -- Law 57 and IRP manuals. PREPA cannot unilaterally decide
25 that countering or not countering a contract is consistent

1 with the mandates of PREB.

2 First, we claim jurisdiction over all contracts in
3 existence. The PREB authority is not limited to approving new
4 contracts. It has authority about -- on all contracts, and
5 complies with all existing contracts. That's part of the
6 exclusive jurisdiction of the PREB. So I differ from PREPA'S
7 position that there's nothing in the law that says that PREB
8 has jurisdiction.

9 THE COURT: Do you have specific section cites for
10 those provisions?

11 MR. AGRAIT: Yes, Your Honor. They are subject to --
12 in our oppositions, certainly section -- Article 1.11(b) of
13 Law 17 on the issue of prices on contracts; Act 57, section
14 6.32; and there's also a section that I can't find now that it
15 specifically states that PREB has jurisdiction on all
16 conflicts between parties to any contracts.

17 THE COURT: Would you say that one more time? That
18 PREB has -- I just didn't hear the word.

19 MR. AGRAIT: PREB has exclusive jurisdiction on
20 conflicts between parties to an energy contract. It's a
21 specific PREB power.

22 THE COURT: Thank you.

23 MR. AGRAIT: Okay. May I continue, Your Honor?

24 THE COURT: Yes, you may.

25 MR. AGRAIT: Okay. Thank you.

1 Prior to Law 57, the rejection of M Solar and YFN
2 Yabucoa could already be found due to being approved by both
3 -- PREPA's Board of Directors. Not anymore. Whether the
4 decision to reject complies with the public policy is in
5 PREB's hands.

6 I repeat, the policy of the Commonwealth and the
7 practice of the contracts were in PREPA's Board before Law 57.
8 Not anymore. As of today, Your Honor, PREB is entertaining at
9 least six open dockets of proceedings to determine whether
10 PREPA's actions comply with Commonwealth public policies that
11 PROMESA Law itself states public policy issues are retained by
12 the Government of Puerto Rico.

13 In one of the proceedings, PREB 2018-0001, the PREB
14 specifically states that the level of the global energy
15 compression -- it's not dependant on prices, other than actual
16 market prices, not -- the phrase I call oxymoron -- of Board
17 determined market prices as PREPA plans to be. All is not --
18 PREB can decide whether PPOAs, as I mentioned, are in direct
19 compliance or not with PREB's own orders, the IRP and --
20 definitely. The rejection would make it impossible to apply
21 the proper IRP and -- IRP mandate. It's only PREB who can
22 determine that.

23 Now, one power that is definitely losing of PREB is
24 price setting of the energy contract, the price of energy in
25 any contract. PREPA has been frank, open, honest in saying

1 | that they -- the Board predetermined the market price of ten
2 | cents per kilo. That Board could determine price, not market
3 | -- open market price was determined using that data by PREPA'S
4 | Board, and in that manner, it stated the price of the energy
5 | contract, a power that the Board used to have before Law 57,
6 | but it doesn't have anymore. The only one who can in Puerto
7 | Rico say the price of the contracts is X is the PREB.

8 | In that matter --

9 | (Sound played.)

10 | MR. AGRAIT: -- if the determination of PREPA would
11 | have been based on other issues of contract, then we might not
12 | be here at this hearing. But PREPA opened the table that the
13 | issue was price, and PREPA has no power to predetermine price
14 | prior to a PREB determination.

15 | THE COURT: Now, would you please speak to
16 | Mr. Stevens' point about preemption, that the Bankruptcy Code
17 | provision incorporated in PROMESA says that a debtor can
18 | reject a contract with court approval?

19 | He says that that would preempt any local constraints
20 | on the power of this debtor to reject the contract and subject
21 | it to the business judgment rule. What is your response to
22 | that?

23 | MR. AGRAIT: Yes. I can consider, Your Honor, that
24 | there's the intervention on the issue of PREB determining the
25 | public policy of the Commonwealth. And it is an issue that is

1 raised before the bankruptcy court, because PREPA cannot take
2 decisions alone, because it's subject under its own law to
3 PREB and certain affiliations.

4 I repeat, if this were before Law 57, you would have
5 the debt rejection and that's it, but before they come
6 through, Your Honor, they have to comply with their own
7 internal procedures. It would be ridiculous to think that
8 PREPA could go to me with a rejection that has not been
9 approved by its own Board of Directors. Neither can they go
10 to you because of a rejection that has not passed through
11 PREB, which has, in reality, the power --

12 (Sound played.)

13 MR. AGRAIT: Can I finish?

14 THE COURT: You can finish your sentence, yes.

15 MR. AGRAIT: Powers that were before in the hands of
16 the Board of Directors alone, but now are shared by the Board
17 and PREB. There's nothing in PROMESA on issues of public
18 policy that would make it possible for PREB to act, and then
19 PREPA go to you to request the rejection.

20 THE COURT: Thank you, Mr. Agrait.

21 MR. AGRAIT: Thank you.

22 THE COURT: Mr. Stevens, you have two minutes for
23 rebuttal.

24 MR. STEVENS: Thank you, Your Honor.

25 I think I'd just like to briefly state to the extent

1 to which Mr. Agrait suggests that PREB's approval of the
2 matter is essentially corporate authorization akin to a board
3 approving PREPA'S actions, we would totally disagree with
4 that, Your Honor, and we don't think that the brief suggests
5 at all that it's a matter of prior corporate authorization
6 akin to that.

7 Indeed, we would continue to support the point made
8 in our brief and made earlier that PREB simply is not given
9 any power, let alone something that would be akin to prior
10 corporate authorization over the rejection of a contract.

11 Mr. Agrait cites Article 1.11(b) of Act Number 17 of
12 2019, which is cited on page four of their -- of the
13 objector's brief for YFN Yabucoa. And this provides that any
14 Power Purchase contract or any amendment or extension of a
15 Power Purchase contract shall be executed in accordance with
16 Article 6.32 of Act 57 of 2014, which in turn cited in the
17 brief at page five, says that PREB shall evaluate and approve
18 all contracts -- I'm leaving out a couple of words here, dot,
19 dot, dot -- prior to the execution of said contracts.

20 We submit that neither of these points support the
21 contention that PREB has authority over the rejection of a
22 contract. They both clearly talk about the approval of new
23 contracts or amendments to contracts.

24 Regardless, Your Honor, we would also continue our
25 point that any state law assessing the standard for rejection

1 or constraining that the debtors' ability to reject a contract
2 would be preempted, the Bankruptcy Court of Eastern District
3 of California in *In re: City of Vallejo*, 403 B.R. 72,
4 conveyed a situation where California state labor law fought
5 to restrict a municipal debtor's ability to reject a contract.
6 The Court held that that was preempted by Bankruptcy Code
7 Section 365. We submit that that similarly would apply here.

8 (Sound played.)

9 MR. STEVENS: Unless the Court has any further
10 questions, I will cede.

11 THE COURT: Thank you, Mr. Stevens, and thank you,
12 Mr. Agrait, for those arguments. The Court reserves decision
13 on this motion.

14 We now turn to the second contested matter, which is
15 the government parties' motion for an order allowing an
16 administrative expense claim in connection with LUMA.

17 And so the first speaker is for the Oversight Board.
18 I have Mr. Possinger down for nine minutes. And the motion is
19 docket entry no. 16241 in case no. 17-3283.

20 MR. POSSINGER: Good morning, Your Honor. Paul
21 Possinger of Proskauer Rose on behalf of the Oversight Board
22 as representative of PREPA.

23 Just one clarification, Your Honor. I believe I have
24 ten and a half minutes.

25 THE COURT: All right. My notes said nine, but we'll

1 make it ten and a half.

2 MR. POSSINGER: I think it will all add up to 45
3 minutes at the end of the presentation. I'd also point out
4 before I begin that Mr. Friedman will be addressing the topic
5 of the termination fee. So to the extent Your Honor has any
6 questions regarding the termination fee, you may want to defer
7 those to Mr. Friedman's presentation.

8 THE COURT: Thank you.

9 MR. POSSINGER: So as you indicate, Your Honor, we
10 are here on the government parties' second motion to approve
11 an administrative expense priority claim for obligations of
12 PREPA accrued under its Operation and Maintenance Agreement
13 with LUMA Energy, which I'll refer to during this presentation
14 as the OMA.

15 At this time, the relief we're seeking is for the fee
16 to be earned and incurred after full service commencement once
17 LUMA commences full operational control over the grid during
18 the period from commencement of full services through the
19 conclusion of PREPA's Title III case.

20 Your Honor, I'll start with an important point from
21 the Court's prior ruling granting our motion allowing an
22 administrative expense claim for front-end transition
23 expenses. But PROMESA affords government parties substantial
24 discretion and autonomy in establishing government policy.
25 It's the clear policy of the Puerto Rico Government and the

1 mandate of Puerto Rico law that PREPA be transformed and
2 modernized from its current state, and an express requirement
3 of this policy is that PREPA be removed from -- there's a
4 statute called the ebb and flow of politics. That it be
5 removed from politicized management and that its assets or its
6 operations be transferred to private entities.

7 This policy has been enthusiastically supported by
8 the Oversight Board. It's been included in certified fiscal
9 plans for PREPA and the Commonwealth for several years now.

10 The OMA is an essential step in performance policy in
11 complying with Puerto Rico Law and the certified fiscal plans.
12 LUMA has announced that it intends for the full service
13 commencement to begin on June 1st, meaning it expects that all
14 the monies allowed to be satisfied or waived by that date. So
15 LUMA's take over of grid operations is imminent, and while
16 there are many conditions precedent, they would be allowing to
17 -- an administrative expense claim for these interim fees to
18 be incurred and earned.

19 Most of the issues that are relevant to the relief we
20 request here and the objections that have been filed have
21 already been determined and decided by this Court in Your
22 Honor's ruling from last October allowing LUMA an
23 administrative expense claim for the front end transition
24 obligations.

25 In that ruling, among the benefits and the services

1 the Court found is that they were necessary to achieve the
2 primary benefit of the OMA, which is assumption of full
3 operational control over the grid. LUMA is now close to ready
4 to take over the grid, but PREPA'S still in Title III.

5 So the Oversight Board had negotiated a supplemental
6 agreement with LUMA to ensure that LUMA could take over as
7 soon as it's ready, even if PREPA is still in Title III. And
8 those are big asks. LUMA bargained for a 15-year deal in
9 exchange for taking on this challenge, hiring several thousand
10 employees, investing all the resources it's going to need to
11 run the grid.

12 Under the supplemental agreement, they agreed to take
13 all this on with the possibility that it's only going to last
14 18 months. LUMA was not willing to operate in Title III, back
15 then, so we negotiated an 18-month time frame in compensation
16 for the Title III time to that extent. This is what it took
17 to get services started on OMA's original time frame, without
18 conclusion of the Title III case.

19 And the benefits of these services, the OMA services
20 to PREPA, its customers and the island economy are clear. As
21 I noted at the outset, the OMA is necessary for compliance
22 with the policy established by the government parties. By
23 itself, that's benefit enough.

24 As we explained in our papers, and as is amply
25 supported by the declaration of Mr. Marrero, the services

1 themselves are going to provide substantial and concrete
2 benefits to PREPA. Now, I won't go into details here, but I
3 refer the Court specifically to paragraphs nine through 16 of
4 Mr. Marrero's declaration.

5 As for the fees, and as with front end transition
6 fees, we're only seeking allowance of fees actually earned
7 through satisfactory performance of LUMA's duties under the
8 terms of the OMA, plus the termination fee, to the extent that
9 fee is earned and incurred.

10 Most of the arguments that have been raised by the
11 objectors to this motion have already been addressed and
12 disposed of in Your Honor's prior order regarding the front
13 end transition services, but I will briefly run through those
14 here.

15 First, the union parties argue again that the
16 administrative claims are not available in Title III, because
17 there is no estate in Title III. The Court's already ruled
18 that administrative claims under section 503(b)(1)(a) for
19 services that benefit a debtor, a Title III debtor, may be
20 allowed in Title III cases. The union has appealed this
21 ruling, but for now, it's the law of the case, and the Court
22 can and should continue to apply it as that.

23 Second, Whitefish, Cobra, and Retirement System all
24 argue again that the allowance of an administrative claim for
25 LUMA will prejudice their own recoveries on their own claims.

1 Your Honor's prior ruling, you noted the particular effects of
2 granting the motion on other individual creditors have no
3 bearing on an allowance of this administrative claim.

4 As the Court has noted several times now, the purpose
5 of Title III cases is not only to maximize creditors'
6 recoveries, but to require a more holistic approach, focusing
7 on continuation of the debtors and their ability in aid of the
8 Commonwealth. Here that is critical.

9 In this case, the OMA, and millions of Puerto Rico
10 residents and businesses that rely on PREPA, it will be a
11 benefit for them, a more reliable and resilient power grid.

12 Third, regarding ripeness, union parties are going to
13 argue as they often do that the motion isn't ripe. This time
14 based on their own challenges to the PREB approval, their
15 appeal of Your Honor's ruling from last October, pending
16 legislation they hope will delay or terminate the deal, and
17 the OMA's conditions precedent. At this point, we should be
18 able to dispense with this argument fairly quickly, because
19 several days ago the union filed a lengthy complaint asserting
20 11 counts seeking to terminate the OMA; and two days ago they
21 filed a preliminary injunction motion seeking to enjoin it.
22 That adversary is seeking to block LUMA's takeover of the
23 grid. Our motion seeks to satisfy a condition precedent to
24 LUMA's takeover.

25 If their lawsuit is ripe for adjudication, as they

1 say it is because they allege that this Court has subject
2 matter jurisdiction, its motion is certainly ripe for
3 adjudication. But the adversary proceeding aside, this motion
4 is ripe. The OMA is a live, valid, binding agreement duly
5 approved under Puerto Rico law by the P3 authority, by PREB,
6 by the Governor, and by the Oversight Board.

7 The parties are performing their duties under the
8 agreement, and they have been for ten months. There's no
9 current legal impediment to any party's performance, no Court
10 order, no PREB resolution, no legislation. With any valid,
11 enforceable prohibition under applicable law, including
12 PROMESA, then the relief to be granted under this motion might
13 become partially or entirely moot and no administrative claim
14 would be -- it would continue to be earned potentially. But
15 the law in the First Circuit as we cited in our papers is
16 clear. Potential future mootness does not negate current
17 ripeness. The pending future can be described by the union
18 parties as just that, future possibilities that cause no legal
19 impairment of the performance of the OMA.

20 One more note briefly on the unions in the adversary
21 proceeding. At the end of the day, the unions complain of a
22 challenge to the government's policy of transformation of
23 PREPA. All the arguments they read about, the merits, and the
24 legality of the OMA go to a policy they opposed, not the
25 benefits LUMA would provide under the OMA. To the extent they

1 raise those issues in opposition to this motion, they should
2 be litigated in that action. They're not relevant to this
3 motion.

4 Fourth and finally, Your Honor, the Committee
5 reasserts its position that the Court should compel an
6 amendment to the supplement by limiting LUMA's right of
7 reasonable consent under PREPA's Plan and Confirmation Order.
8 Once again, the Committee seems to misunderstand. We are not
9 asking for Court approval of the OMA or the supplement. We're
10 not seeking to assume under Rule -- Section 365 of the
11 Bankruptcy Code. We're only seeking allowance of an
12 administrative claim the fees LUMA actually and eventually
13 earns.

14 The Committee has raised the possibility that LUMA
15 will use its consent to run out the clock and eventually --
16 (Sound played.)

17 MR. POSSINGER: -- termination fee. That's
18 completely unsupported speculation. There's no basis in fact,
19 no basis on the record, no basis from LUMA's behavior to date.
20 To me, that would be the case but -- there's no credible
21 reason on this record to deny the relief they're requesting in
22 this motion based on a highly hypothetical challenge to a
23 contract term that has nothing to do with fees.

24 If it's hypothetical -- it would have materialized.
25 If LUMA were to make a reasonable demand to PREPA under this

1 provision, they would be in dispute with LUMA, and that
2 dispute may end up before the Court -- before Your Honor. The
3 government parties don't expect that will happen, but
4 regardless, that potential eventuality isn't relevant to the
5 relief we are requesting here.

6 With that, Your Honor, unless you have any questions
7 of me, I will cede the podium to Mr. Friedman.

8 THE COURT: Thank you, Mr. Possinger.

9 MR. FRIEDMAN: Good morning, Your Honor. It's Peter
10 Friedman from O'Melveny & Myers on behalf of AAFAF. And I
11 just want to specifically address the termination fee.

12 The termination fee was designed to incentivize LUMA
13 to take on significant risk to start the transformation of
14 PREPA's transmission and distribution system during Title III.
15 And it's a key point, because without that fee, LUMA would not
16 have started the work during the Title III case. And we think
17 actually that getting that work started is critical to moving
18 PREPA's Title III case forward. PREPA instead would be
19 languishing.

20 The Committee complains it's wrong to have a
21 termination fee, but giving LUMA rights if there's no plan
22 confirmed in 18 months -- which, by the way, December of 2022,
23 five and a half years from when PREPA began its Title III
24 case -- we actually think it's backwards. The best chance
25 PREPA has of moving forward and adjusting its debts, and

1 beginning to provide better quality of services across the
2 board at any time in the future is through LUMA starting on
3 June 1st to take over control of the system, and to have
4 incentives to move forward quickly thereafter that every party
5 is cognizant of to avoid having to pay a termination fee.

6 Now, one of the key things in thinking about the
7 termination language that I think the Committee has missed is
8 the critical advantage to the administrative claim, and
9 specifically the approval of a termination fee to the extent
10 it's earned and benefits PREPA. Imagine if we had not
11 bargained for administrative claim status. LUMA could have
12 walked away and said we are not going to start this now, or it
13 could have demanded something like an escrow or posting of a
14 bond, neither of which would have been subject to court
15 approval under 305. PREPA still has the right to enter into
16 contracts outside of -- outside of court approval.

17 It certainly could have entered into that kind of
18 contract. And that would have been a much worse drain on
19 PREPA's finances. It would have required an immediate capital
20 commitment and an inefficient use of its resources. It's
21 actually much better for everybody, including PREPA's estate
22 and its creditors for PREPA to have the flexibility to have
23 this administrative priority commitment rather than an
24 immediate capital commitment.

25 (Sound played.)

1 MR. FRIEDMAN: So, Your Honor, I think the one other
2 point I wanted to make with respect to this is that I think
3 it's important to think of this in the context of a break-up
4 fee, because of the inducement it provided and certainly the
5 courts can approve break-up fees. But here I think the
6 termination fee is even more important, because of the fact
7 it's an inducement not just to a bidding process or not at all
8 to a bidding process, like a break-up fee is, but it's
9 actually designed to begin providing the benefits that the
10 Marrero Declaration talked about, which are really fundamental
11 infrastructure investments which are a type of paramount
12 benefits that Title III, in some distinction in Chapter 11,
13 really makes exceedingly important given, as Mr. Possinger
14 mentioned earlier, the benefit -- the purpose of Title III
15 cases and the holistic approach that this Court and the First
16 Circuit has endorsed.

17 We don't think it's proper --

18 THE COURT: Wouldn't it be --

19 MR. FRIEDMAN: I'm sorry, Your Honor?

20 THE COURT: Wouldn't it be fair to look at this
21 termination fee as something that essentially makes the
22 compensation higher if it turns out to be a short-term
23 contract than if it goes forward for the full 15 years?

24 MR. FRIEDMAN: I don't think so, Your Honor, because
25 I don't think it's additive. If it goes to the full 15 years,

1 they simply get paid each other --

2 THE COURT: I mean net amount that they receive if
3 the contract is terminated, because of the 18-month condition,
4 they get the extra year's compensation, so that the amount
5 that's paid for the services before the exit from Title III is
6 higher than the amount that would have been paid for those
7 services had the contract gone all the way through its full
8 projected life.

9 MR. FRIEDMAN: Yes, I think that's fair to say.

10 (Sound played.)

11 THE COURT: Thank you.

12 MR. FRIEDMAN: That's what it's for, Your Honor, to
13 be fair. That's what it's for.

14 THE COURT: Thank you. You can wind up.

15 MR. FRIEDMAN: That's all, Your Honor. I think I
16 reserved part of my time in rebuttal, but those are the key
17 points that I wanted to address.

18 THE COURT: Thank you very much, Mr. Friedman.

19 So now I understand the next speaker up is
20 Mr. Despins or Mr. Bassett for nine minutes for the UCC in
21 opposition?

22 MR. DESPINS: That is correct, Your Honor. Good
23 morning, Your Honor. Luc Despins --

24 THE COURT: Good morning.

25 MR. DESPINS: -- with Paul Hastings on behalf of the

1 Committee.

2 Your Honor, we will rest generally on our papers, but
3 I want to take, you know, the nine minutes to focus on the
4 termination fee. And the first point I wanted to make is
5 that, you know, this argument -- it almost implies that LUMA
6 is doing this, you know, now without any compensation. It's
7 very important to understand that currently, and this is based
8 on the March 2021 LUMA monthly operating report, LUMA has
9 already invoiced PREPA over 116 million and it expects to
10 invoice an additional 35 million during these front end
11 services period.

12 So they're getting fully compensated, plus a fixed
13 fee component part of that. And we do recognize that LUMA
14 will make additional investments or involvement here. But
15 they are getting paid for these additional -- additional work,
16 a fixed fee of 115 million or approximately ten million per
17 month during this interim period.

18 And the Board is attempting to justify the
19 termination fee by saying that LUMA will need to incur further
20 costs, if asked to unwind the operation. Yet all of that is
21 covered in section 4.9 of the supplemental agreement, where it
22 provides that up over and above the 115 million termination
23 fee, they will receive payment for any such back-end
24 transition services. And also under the section 16.4 of the
25 O&M Agreement, the back-end transition fee already includes a

1 ten percent premium over actual costs.

2 So the argument that the Board is making is really
3 not valid, because it's tantamount to a break-up fee, but, in
4 fact, they're getting fully compensated for the work they're
5 doing now. And what it's designed to do is really to
6 compensate it for profits not earned, and that's not a cost,
7 and that's not a benefit -- profits not earned in the future,
8 and that's not a benefit to the estate.

9 We cited, Your Honor, the *America West Airlines* case
10 for the purpose of establishing that the liquidated damage
11 provision is not available under 503. The Board responded
12 with the Fourth Circuit opinion in *Merry-Go-Round*, but it's a
13 very important one to look at, *Merry-Go-Round*, and also to
14 look at the cases cited by *Merry-Go-Round*, and cases cited
15 since -- that cite *Merry-Go-Round* since then. But in
16 *Merry-Go-Round*, Your Honor, the leasing question was approved
17 by the Court. There was a motion to approve the entirety of
18 the lease during the case, and that's the lease that was being
19 defaulted on. Not the same situation we have here.

20 And the Court actually relied on that and said, well,
21 obviously since the contract of the lease in that case was
22 before the Court and the Court determined that it was in the
23 best interest of the estate to enter into that contract, that
24 issue is behind us. But here the Board is not seeking
25 approval of the contract. They're seeking approval of the

1 administrative expense status of certain aspects of the
2 contract.

3 So this argument that they're making relying on
4 *Merry-Go-Round* is really of no moment. And if you look at the
5 *Lamparter Organization* decision, which *Merry-Go-Round* cited,
6 that was a decision by Judge Gershon, Eastern District --
7 District Court I believe, where the Court basically said that
8 the Court had before it a situation where a lease had been
9 entered into with court approval and the -- basically, the
10 Court said the similarities between an assumed pre-petition
11 contract and a newly executed post-petition contract are more
12 evident because the landlord insisted that the new executed
13 lease be presented to the bankruptcy court for approval.
14 Thus, the Court basically had to make the finding that the
15 contract was in the best interest of the estate. Here the
16 Board has chosen not to go down that path. So that is a very
17 key distinction, Your Honor.

18 In addition to that, since then, the *Merry-Go-Round*
19 decision has been cited by many other courts, and, in fact,
20 distinguished. There's a decision by Judge -- I'm sorry, Your
21 Honor, by Judge Shannon in Delaware. The case is called,
22 *Juvenelliano*, which is 464 B.R. 60 -- 51, where the Court
23 said, yeah, okay. I see *Merry-Go-Round*, but I'm dealing with
24 a Chapter 13 case. And you might say, well, we're not dealing
25 with Chapter 13; why is he raising this to me. The point

1 | there is the Court said in Chapter 13 there is not the same
2 | requirement that an assumed lease be made, that a finding be
3 | made on notice of creditors that it is in the best interest of
4 | the estate to assume it. And, therefore, the presumption that
5 | applies in *Merry-Go-Round* does not apply in Chapter 13, which
6 | is essentially the situation we have here where there is no
7 | Court approval of the contract. The Court -- and the Board is
8 | very proud of this. They're saying, we are not seeking Court
9 | approval of the contract at all. So that's a very important
10 | point.

11 | Then, Your Honor, the few other points I wanted to
12 | make is that we're not seeking to rewrite the contract. I
13 | mean, it's like the late fees. Your Honor determined that
14 | those could not be approved on the record you had last year.
15 | Same thing could happen here. So this is not requiring a
16 | rewrite of the contract.

17 | And the supplemental agreement, it's in court, calls
18 | the termination fee a liquidated damage provision. We didn't
19 | make that up. That's a quote from the supplemental agreement.

20 | And in paragraph 56 of their reply, I want the Court
21 | to -- I want to draw the attention of the Court to that
22 | section. There is a -- there is a sentence in there after
23 | *Merry-Go-Round* where they state, the Board says, quote, if the
24 | damages include invalid penalties, comma, the invalid
25 | penalties will not comply with the legal damages. This is not

1 a quote from the case. This is the Board saying that --

2 (Sound played.)

3 MR. DESPINS: -- as if they're implying that there
4 will be a second step to this where in fact the Court could
5 determine later that this could turn out to be a penalty, but
6 they're not doing that. They're not -- it's contrary to their
7 approach. So that section or that sentence is kind of a
8 mystery to us.

9 THE COURT: Which paragraph is that in again? Which
10 paragraph is that in?

11 MR. DESPINS: This is paragraph 56, right after the
12 quote from *Merry-Go-Round*.

13 THE COURT: Thank you.

14 MR. DESPINS: It says, whatever the legal damages
15 are -- I'm sorry, whatever the legal damages are, they are
16 administrative claims. If the damages include invalid
17 penalties, the invalid penalties will not comprise the legal
18 damages.

19 That seems to be what the Board is saying. But we're
20 okay with that. I mean, we're okay with the second phase
21 where the Court would have to determine what they determine to
22 be a penalty or not. What we are not okay is giving a blank
23 check and approving the provision today on the record today.

24 And, Your Honor, we believe there's really no
25 evidence. If this is supposed to compensate for costs, there

1 is no -- given that they're getting compensated a lot right
2 now, and that there's these wind down provisions where they
3 get paid, there's no evidence before the Court today that
4 would allow the Court to find that the 115 is a reasonable
5 liquidated damage provision that. There's just no -- it's
6 their burden to show that, and there's just no record to that
7 effect.

8 The last point I want to make, Your Honor, is the 18
9 months, of course we want the case to end. We all want the
10 case to end. We're not suggesting that we should delay this,
11 the coming out of Chapter 11 -- sorry, of Title III. The
12 issue, Your Honor, is that the 18 months could be totally
13 without -- outside of our collective control and of your
14 control.

15 I know on the issue of the --

16 (Sound played.)

17 MR. DESPINS: Two seconds, Your Honor. You're
18 probably thinking I'm going to determine that, therefore, I've
19 got it, I'm not concerned about that; but the 18 months, Your
20 Honor, that's something that's totally out of our control. It
21 could be stuck in a regulatory no man's land, as it has
22 before. And, therefore, this is why the Court should be very
23 concerned about giving a 115 or 116 million dollar blank check
24 for the termination fee.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Despins.

2 I have next on my list Ms. Mendez Colberg for the
3 unions. And please confirm to me what your time allocation
4 is.

5 Ms. Mendez? Please unmute your phone and your
6 dashboard.

7 MS. MENDEZ COLBERG: Good morning, Your Honor. This
8 is Jessica Mendez. Can you hear me?

9 THE COURT: Yes. Good morning.

10 MS. MENDEZ COLBERG: Sorry, Your Honor. I just saw
11 on my computer saying I have to refresh my Windows. Okay. My
12 time allocation, Your Honor, would be nine minutes.

13 THE COURT: Thank you. Please proceed.

14 MS. MENDEZ COLBERG: Okay. Thank you, Your Honor.
15 This is Jessica Mendez Colberg on behalf of UTIER and the
16 retirement system of the PREPA employees.

17 Now, the government parties focus their request for
18 administrative claim on the basis that it benefits PREPA. And
19 indeed, this Court already granted the administrative claim of
20 the front end transition services based on such services being
21 beneficial to PREPA. But I want to focus on has the
22 government party satisfied their burden on demonstrating that
23 the interim obligations and the fees associated are actual and
24 necessary expenses that benefit PREPA, and they have not.

25 The government parties rest on the proposition that

1 | since this Court already decided and it is a decision under
2 | review by the Court of Appeals, but since this Court already
3 | decided that the front end transition services were entitled
4 | to administrative expense priority, then the services
5 | performed during the interim period are equally entitled to
6 | such status.

7 | With the second motion the government parties make
8 | little effort to establish to this Court that those expenses
9 | are beneficial to PREPA. What have they submitted in support
10 | of their petition? They rely on the declaration of Omar
11 | Marrero, which is the one that they used for the first motion;
12 | a declaration that by the way is self-serving, because with
13 | all the direct involvement that Mr. Marrero had in the
14 | selection of LUMA Energy, of course he's not going to say
15 | anything less than how good of a decision he made.

16 | So the government parties provide no additional
17 | evidence to meet their burden of establishing that the interim
18 | obligations are beneficial to PREPA. In fact, the only useful
19 | paragraph from that declaration which Mr. Possinger made
20 | reference to are only speaking of generalities of alleged best
21 | practices, without any context as to how LUMA will achieve
22 | these responsibilities, or yet do not even begin to explain
23 | how it can benefit PREPA financially, or let alone if PREPA
24 | can sustain and pay for such services without getting into a
25 | worse financial situation than it already is.

1 None of that is explained in the motion, and they
2 certainly do not explain PREPA'S accumulated deficit of more
3 than 400 million dollars according to Mr. Hector Rosario's
4 declaration that we submitted. The fact that PREPA needs 894
5 million dollars from the Commonwealth to fund LUMA's account
6 is also not explained, on how it benefits PREPA or its
7 restructuring. And while this Court has stated that PROMESA
8 affords the government parties substantial discretion and
9 autonomy in establishing government policies, and
10 Mr. Possinger made reference to that as well, that substantial
11 discretion cannot be a blank check to come into this court to
12 request the relief on behalf of LUMA and not support it with
13 sufficient evidence and comply with the applicable standard.

14 And to be sure, it is not just a matter of the union
15 entities being dissatisfied with the government parties'
16 policy decisions as they couldn't -- UTIER is raising concerns
17 on the legality of the contract, and in the context of this
18 motion the arguments address how detrimental it is for PREPA.
19 And in doing so, on behalf of more than 5,000 workers, many of
20 them risking their lives every day to perform their jobs, jobs
21 that are not guaranteed by LUMA, and it is the retirement
22 system raising concerns on behalf of more than 10,000 retirees
23 who have dedicated their lives to serve PREPA, and now risk
24 losing their pensions, their only source of income, because
25 the government in the extensive negotiations ended up with a

1 contract that would lead the retirement system to insolvency
2 as soon as 2022.

3 Moreover, the Court cannot be persuaded to grant the
4 administrative expense to LUMA out of the fear that LUMA could
5 terminate the contract. Yes, the primary purpose of
6 governmental insolvency proceedings is the continuous
7 provision of public services, but the government parties have
8 not established that PREPA will not be able to continue
9 providing services, which in fact it is providing them right
10 now and has been paying LUMA to learn out how to do the job in
11 Puerto Rico.

12 So the fear of LUMA terminating the contract should
13 not govern these proceedings. And after all, the T&D contract
14 provides far too many instances in which LUMA can terminate
15 the contract.

16 Now, the government parties seem to take offense that
17 the union entities use the word "dismantle" to describe the
18 real effects of the T&D contract, but it was the government
19 parties in the first motion who carelessly and expressly used
20 the term dismantle. And now they prefer the term transform.
21 But the truth is there is no benefit for the debtor if the
22 goal is to dismantle debtor.

23 The fact that PREPA will continue to own the T&D does
24 not speak at all on how these costs and expenses will benefit
25 PREPA and not just LUMA. The contract dismantles PREPA,

1 leaving only a shell of a government instrumentality there to
2 receive federal funds that it will not even get to administer
3 because that will be done by LUMA.

4 And the government parties minimize PREPA'S
5 dismantling by stating in their motions that the operations
6 will transition back to PREPA, or a successor, but how
7 exactly, because the fact is that even though PREPA remains
8 the owner of the T&D, it is left without any employees,
9 because the employees will be parsed -- will be dispersed in
10 the government agencies or laid off when LUMA leaves.

11 And to be sure, Act 120 of 2018 provides the
12 framework for a public-private partnership where the benefits
13 as well as the risks are to be shared. But Act 120 does not
14 provide for a LUMA contract that grants all the benefits to
15 the private operator and shifts all the risks and expenses to
16 the government agency or instrumentality. For this motion, we
17 are talking about 115 million dollars payable in monthly
18 installments for services yet to be performed.

19 Indemnification of LUMA Energy and its affiliates for claims
20 or damages against them, because LUMA is not even responsible
21 for the damages that it causes; and another 115 million
22 dollars of a termination fee which the government parties can
23 only -- only explanation as to how it benefits PREPA is that
24 these are contractual requirements that are part of the
25 overall economic bargain to unlock the benefits of the T&D

1 contract. And for this there is no support on the record of
2 how it benefits PREPA and when those unproven benefits will
3 materialize apart from mere generalities and a self-serving
4 declaration from Marrero.

5 Furthermore, the only arguments of the government
6 parties to reply to UTIER's point that the T&D contract
7 creates a private monopoly is to cite section eight of Act 120
8 that prohibits that these transactions create a monopoly.
9 However, that does not mean that the contract does not
10 actually create a monopoly. And after all, section 15 of Act
11 120 also states that the rights of the workers shall be
12 assured according to applicable law. And we know that the
13 contract expressly excludes the collective bargaining
14 agreement from the definition of system contracts.

15 So to conclude, Your Honor, if we were to say that
16 the union entities have their own agenda as the government
17 parties put it, then the agenda is certainly to protect the
18 rights and the well being of the workers and the retirees,
19 something that it is also their own government's duty.

20 The government parties have not met their burden for
21 the administrative expenses to be granted. General statements
22 will not cut it.

23 And for the rest of our arguments, obviously we rest
24 on our papers. And with that all being said, we respectfully
25 submit our position that the government parties have not met

1 | their burden, and for the consideration -- all these arguments
2 | for the consideration of this Court. And we request the
3 | administrative expense motion to be denied.

4 | If the Court has no further questions, that will be
5 | our argument for the day.

6 | THE COURT: Thank you, Ms. Mendez.

7 | I now have for Whitefish, Ms. Conde Torres at four
8 | minutes.

9 | MS. CONDE TORRES: Yes. Good morning, Your Honor.
10 | This is Carmen Conde on behalf of Whitefish Energy Holding,
11 | LLC.

12 | It is the position of Whitefish, Your Honor, that
13 | LUMA's right to incentives as administrative expense status
14 | shall not have any negative impact on PREPA'S ability to
15 | propose a feasible plan of adjustment that can be confirmed.
16 | That is the real and should be the real benefit to the
17 | debtors.

18 | Whitefish reaffirms its limited objection at docket
19 | 2436. And Whitefish reaffirms its position at docket 2281,
20 | which shows that Whitefish is one of the largest
21 | administrative expense claimants in this case.

22 | The facts are that the first request for 77 million
23 | dollars by LUMA was six months ago. Now, six months after, we
24 | have come up to 300 million dollars request. Six months after
25 | the first request we have no plan filed, no disclosure of

1 ability to pay the creditors in this case, mainly the
2 administrative expenses.

3 There is a great feeling of uncertainty of a
4 millionaire increase in administrative expenses in this
5 particular case, and Whitefish is ignorant on the impact of a
6 reasonable plan of adjustment that can be confirmed. That
7 should be the goal, and that should be the real benefit that
8 shall be viewed in a broader approach by this Honorable Court.

9 It is our prayer, Your Honor, that this Honorable
10 Court considers the effect of this relief by LUMA on debtors'
11 ability to confirm a reasonable and feasible plan of
12 adjustment. So we reaffirm our position, Your Honor, that
13 LUMA's right to incentive of administrative expense status
14 shall not have a negative impact on PREPA'S ability to propose
15 a feasible and confirmable plan.

16 (Sound played.)

17 MS. CONDE TORRES: As of today, we are all ignorant
18 as to what this plan will be.

19 Thank you, Your Honor.

20 THE COURT: Thank you very much, Ms. Conde.

21 And so now we return to movant's counsel for the
22 Oversight Board, Mr. Possinger. What was your revised time
23 allocation?

24 MR. POSSINGER: I think it's six minutes.

25 THE COURT: Okay. That's what I had before -- you

1 started with ten and a half, and I just don't see anything
2 else that's a half, so that's why I asked.

3 MR. POSSINGER: I think maybe the objectors may have
4 had a half in there, so we each had 22 and a half for the
5 total, but I don't know that I'll need the full six minutes.

6 THE COURT: Just go ahead.

7 MR. POSSINGER: Okay. Thank you, Your Honor.

8 First off, Whitefish, their concern that there is no
9 plan and there is uncertainty, for this exercise, for this
10 work -- we're not talking about the plan of adjustment. The
11 focus here is on fixing the utility. Fixing the utility will
12 likely help us get to a successful restructuring, because it
13 will reduce blackouts, blackout grid events, you know,
14 potential future hurricane -- hopefully minimize any
15 disruption from future natural disasters, things like that.
16 That's really the focus here.

17 And, you know, one of the reasons for LUMA taking
18 over June 1st and why it's so important, there's going to be a
19 hurricane season starting in the relative near future after
20 that and they want to be ready for that. So, again, the
21 recovery to creditors, sure, it's important, but the primary
22 goal of Title III is to make sure that the Title III debtors
23 have the ability to serve the needs of their constituents and
24 here it's the customers of PREPA. That's really the exercise
25 here.

1 With respect to the union, there's a lot of
2 allegations in the presentation that the contract is -- that
3 it violates law, that it calls for the rejection of CBA, that
4 it leaves the pension insolvent and things like that. As I
5 said in my opening, these are all matters that are going to be
6 addressed in the adversary proceeding.

7 But a few points, the OMA does not reject the CBA.
8 Only the Oversight Board can reject a CBA, and there's no
9 motion pending to do that. The pension. Whatever situation
10 the pension is in, it exists today because of the past, and as
11 noted in our fiscal plan, the pension is over three billion
12 dollars under funded as we sit here today.

13 With regard to the statement that there's no -- that
14 there is no -- presentation has not met the burden on
15 benefits, I start with the policy. The policy is that PREPA
16 needs to be removed from politicized management. That's what
17 the law says. That's what the fiscal plans say.

18 What the Marrero Declaration says, among other
19 things, is that LUMA is qualified. And it looks in detail at
20 its qualifications and what it's being retained to do. That's
21 in the Marrero Declaration in detail.

22 I want to point out that the Marrero Declaration is
23 not refuted at all by the declaration that the unions
24 submitted of Mr. Rosario Hernandez. And just to spend a few
25 minutes with him, the topics of his declaration are the

1 | alleged financial impact on PREPA, discussing the deficits
2 | that are not in evidence -- I frankly don't know where he got
3 | his numbers, especially the 893 million dollar loan from the
4 | Commonwealth that will not be a loan from the Commonwealth.
5 | There is no financial motion pending before Your Honor. There
6 | is going to be a contribution or appropriation in some dollar
7 | amount to help PREPA build up its reserve accounts as we
8 | needed, as required by the OMA.

9 | The declaration talks about an impact on rates.
10 | Without tying in an impact on rates to the OMA other than it
11 | be inaccurate since -- regarding the 894 million dollar loan.
12 | It talks about hypothetical conflicts of interest. Talks
13 | about concerns about dismantling PREPA, but also creating an
14 | illegal monopoly somehow. And then a lot of focus on the
15 | impact on employees and pensions, which we will get to the
16 | adversary proceeding, but they're not relevant to the benefits
17 | with the OMA and the services LUMA will provide to the
18 | residents and customers of PREPA.

19 | With respect to dismantling, you know, they -- they
20 | the union alleges that PREPA is -- or that the OMA is going to
21 | dismantle PREPA. And they really don't explain how
22 | dismantling benefits. That's sort of a circular argument.
23 | They are the ones alleging that there's a dismantling. Again,
24 | we reiterate. PREPA retains ownership of the assets, possibly
25 | through a wholly owned subsidiary under the OMA. That's yet

1 to be determined. But PREPA retains ownership. The policy
2 calls for private operation --

3 (Sound played.)

4 MR. POSSINGER: The policy calls for private
5 operation, and LUMA will come in and operate the grid.
6 There's a separate process for private operator for
7 generation. When those terms are concluded of those
8 arrangements, the assets will revert to operation by PREPA in
9 what we expect to be a vastly improved state. But there's no
10 dismantling. PREPA'S not being dismantled. What's being done
11 is pretty -- the law is being complied with.

12 In fact, Puerto Rico Law, section 1.8(b) of Act 17 of
13 2019 requires that there be -- that the vertical monopoly of
14 PREPA be discontinued. So the OMA again will further PREPA'S
15 compliance with Puerto Rico law and the policies established
16 by the Oversight Board.

17 I'm trying to see if there's anything else I didn't
18 address here, Your Honor.

19 I think the balance of the unions' remarks again are
20 challenges to the contract that are being addressed in the
21 adversary proceeding. They should be deferred to the
22 adversary proceeding. They don't go to the benefits of the
23 OMA once LUMA takes over, the target date for June 1st. Thank
24 you, Your Honor.

25 THE COURT: Thank you, Mr. Possinger.

1 And, finally, Mr. Friedman for AAFAF. I have you
2 down for two minutes.

3 MR. FRIEDMAN: Yes, Your Honor. Thank you very much.
4 Peter Friedman on behalf of AAFAF.

5 I actually think that Mr. Despins referenced
6 *Merry-Go-Round* to lead to the opposite conclusion. The fact
7 that the Court doesn't supervise a chapter -- a Title III
8 debtor in the same way as a Chapter 11 debtor does should mean
9 even more deference to the decision to enter into the contract
10 and seek an administrative claim status for the termination
11 fee.

12 And I want to also address what paragraph 56 means,
13 because it really relates to the fact that we have not sought
14 Court blessing for every provision of the contract. What that
15 means is PREPA has whatever defenses it has to the termination
16 fee. That's what we're saying. Whether it's a condition of
17 revoking or, in the unlikely circumstance if PREPA were to
18 argue that some provision of the contract isn't valid, because
19 the contract hasn't been blessed by the Court at this point,
20 PREPA reserves all of its rights.

21 Obviously that's not its intention, but to the extent
22 that there's some provision in there that's non-compliant with
23 the law, that doesn't constitute an administrative damages
24 claim -- an administrative claim, but what is valid should be
25 blessed as an administrative claim. And LUMA needs that

1 security now to enter into the overall set of benefits that
2 it's providing to PREPA through an assumption of the T&D
3 system on June 1st.

4 I also want to differentiate this from the late fee
5 issue that Mr. Despins raised. Late fees previously were
6 speculative. The circumstances under which they could arise
7 and the magnitude of those fees were unknown. That's clearly
8 not the circumstance here. There's an amount and there are
9 conditions under which it can be earned.

10 So, Your Honor, that's all I have. And we ask that
11 the Court approve the administrative expense application and
12 enter and approve the order as requested. Thank you, Your
13 Honor.

14 THE COURT: Thank you, Mr. Friedman. The Court
15 reserves decision on this motion as well.

16 And we will now turn to the Commonwealth's Motion for
17 Stay Relief to Prosecute Further Motions for Partial Summary
18 Judgment. I anticipate that we should be able to get through
19 at least the opening and objecting arguments before we have to
20 break at 11:45. And then we will continue as necessary with
21 that and the UCC's cross-motion after the midday break.

22 And so this is docket entry no. 16326 in case no.
23 17-3283. And I have Mr. Firestein as the first speaker for
24 the Oversight Board at 14 minutes.

25 MR. FIRESTEIN: Good morning, Your Honor. Actually,

1 I think it's 13, at least based on the Agenda I have. But I
2 don't think it's going to be an issue one way or another.

3 Can you hear me?

4 THE COURT: I can hear you. Before you start, I
5 apologize to everyone. I have some notes that were
6 extrapolated from the Agenda, and I think that we may not have
7 used the most recent one. So I will ask you as you go along
8 to correct me if I don't recite the right amount of time.

9 MR. FIRESTEIN: No problem, Your Honor.

10 THE COURT: You may proceed.

11 MR. FIRESTEIN: Thank you. Good morning, Your Honor.
12 Michael Firestein of Proskauer on behalf of the Board.

13 I had an argument laid out, but in light of the
14 Court's comments, I want to in the first instance address what
15 I think were three issues that were raised by the Court.
16 There might be subparts to those issues, but as I understood
17 the issues, and they're not necessarily in the order that were
18 presented by the Court, but one is with respect to court
19 resources; another was with respect to why is it necessary to
20 do it for the plan; and the third issue related to the
21 potential overlap of rulings on issues that had yet -- for
22 which rulings have yet to be made in connection with the
23 earlier motions for summary judgment that were filed last year
24 and that are currently the subject of the 56(d) Order and some
25 ongoing discovery.

1 So let me just take them in that order. As far as
2 the Court resources issues are concerned, obviously we're
3 sensitive to that fact. I think the purpose of this motion is
4 to tee them up so that they can be addressed in the order that
5 is available for the Court based upon its own resources, and
6 obviously to the extent that a schedule which frankly has yet
7 to be established for these motions, that that can be adjusted
8 as needed.

9 I think the way the motion was teed up was that we
10 would meet and confer after the ruling, assuming that it was
11 granted. And then we would propose a schedule to the Court.
12 And if the Court had other ideas relative to that, then the
13 Court would adjust accordingly. So naturally there's only one
14 court and there's only one judge who's deciding these issues.
15 And I think our sensitivity to that is above all else, and our
16 objective was merely to put the issues before the Court to
17 deal with them in a manner that was both consistent with Court
18 availability as well as, importantly, relative to the
19 anticipated plan for the plan. And the confirmation schedule
20 that is -- has been referenced in some of the other papers.

21 And to that end, I think that the scheduling of the
22 confirmation may be in distress if other issues are not
23 resolved in advance of confirmation. As I'll get to it in a
24 minute, as to why it's necessary for the plan, the simple
25 truth is we don't want to get to confirmation if we don't have

1 to, not knowing whether the plan that is available or being
2 proposed is one that can be satisfied by the Commonwealth.
3 And we view, in light of the plan that is now being proposed,
4 something that we had forecast some time ago was a
5 possibility. There are now additional gating issues that need
6 to be -- that need to be addressed relative to that.

7 And frankly, Your Honor, they have to be addressed
8 regardless, and we continue to emphasize that it will
9 streamline the confirmation process, and particularly given
10 the PSA milestones that the Court is aware of, one of which is
11 with some minor modifications, the need for an effective date
12 of December 15th of this year. And with that as a threshold
13 point, it's important to the Commonwealth's exit from Title
14 III, that whatever is necessary to be able to satisfy that
15 milestone, again subject to the minor modification that exists
16 within the PSA, is something that we are striving to attain.

17 Contrary to the opposition that has been raised by
18 the objectors in this case, we're not particularly trying to
19 jam anyone relative to claims. What we're dealing with is the
20 issues that are being presented to us as they are being
21 presented to us. And in light of the PSA, the -- everybody's
22 expressed desire to exit from Title III, and the need to
23 resolve these issues, I think that our position is it's time,
24 it's sufficient, and it was predictable. Even if it relates
25 to our need to triage these matters in an orderly manner to

1 allow the Court to resolve them in a manner that is within the
2 Court's ability given the scheduling issues that exist.

3 More particularly --

4 THE COURT: Well --

5 MR. FIRESTEIN: Go ahead.

6 THE COURT: -- a milestone that you negotiated that
7 you said it is an admirable goal, and the Court's intention is
8 to do everything in its power to facilitate keeping to an
9 appropriately tight schedule; but, again, the Court's
10 resources are finite. There are a number of ways, including
11 proceedings that are going on outside of the litigation
12 context, to seek to resolve these issues in good faith, and
13 keep the ultimate resolution on a feasible and appropriate
14 track.

15 So, you know, if what you're saying is that every
16 single thing is going to have to be litigated now or in the
17 G94.

18 context of the confirmation proceedings, that of
19 course will make it more difficult to keep the timetable that
20 you're proposing. That's just an observation.

21 MR. FIRESTEIN: Assuredly, Your Honor. And at the
22 end of the day, there are only 24 hours a day and seven days
23 in a week. And I'm not aware of a legal argument that can
24 overcome the Court's, you know, practical inability to address
25 these issues. But a couple of observations about what the

1 Court just noted.

2 You are correct that we did in fact -- you know, it
3 is a deadline that was one that we agreed to, but it wasn't
4 one that was established unilaterally by the Oversight Board
5 in its pursuit of a plan. It was heavily negotiated. It's
6 taken a long time to get to these places. And that was the
7 date that was ultimately agreed upon pursuant to the PSA that
8 was reached.

9 And in furtherance of that, I know the Court is aware
10 of other parties, including some who are defendants in this
11 adversary proceeding, who are for the moment signers on, if
12 there is such a phrase, to the existing PSA. We're hopeful
13 that that can be brought to fruition. And so there are --
14 there are -- you correctly note that there are procedures
15 outside of the context of litigation that continue to move
16 forward.

17 However, as much as we might hope that everything
18 could be consensual, we don't know that that's the case. And
19 while consensus is building relative to the existing agreement
20 we have to be able to address within the permission granted by
21 the Court to the claims that are going to be a potential
22 impediment to confirmation. And so from our perspective, we
23 need to do whatever we can in order to make these things able
24 to be resolved prior to confirmation, which I think leads me
25 to the question of sort of why is it necessary and the Court's

1 concern that it hadn't been sufficiently laid out within the
2 context of the motion papers.

3 We need to know how much money is available to be
4 able to afford the plan. We tried to make that point.
5 Perhaps it wasn't as direct or complete as it should have
6 been. And the issue of the affordability is not its
7 magnitude. That being the claim that we're seeking to move on
8 at this point. It's the existence of the claim.

9 It's not a pot plan where all the claims divide up
10 their share of a fixed amount. The unsecured claims of the
11 retirees, the GO Bonds, the general claims, the revenue bond
12 claims, are each treated differently. And I would of course
13 yield to my restructuring partners on the particular construct
14 of the plan, but the Court has to know whether the revenue
15 bond clawback claims are valid at any level to know if they're
16 going to be entitled to payment, and whether the payment is
17 sufficient if there's an objection that's going to be made to
18 that.

19 I mean, Ambac alluded to it in its own -- has alluded
20 to its own objections to the amount that's going to be --
21 that's going to be necessary in connection with this. We need
22 to know the amount -- I mean, in some ways, we need to know
23 the amount of the clawback claims. But the threshold issue
24 for that is whether -- do the monolines in their case have a
25 claim at all, which will contribute to that in terms of

1 whether it's -- whether it's there. And on whether they're
2 going to be paid in full.

3 I mean, the Commonwealth just doesn't have any enough
4 resources I don't think to post enough money to pay all of
5 those claims in full. So as a threshold issue, we want to
6 establish the existence of those claims and we think this as a
7 gating issue is one that is designed to affect that. And as
8 we forecast some -- you know, some many months ago, we said
9 that we might get to the place where there would be other
10 gating issues. And now that the plan is taking shape based on
11 its new contours, we're now faced with that situation.

12 So we want to get to a plan that is going to be
13 confirmable, and this is a threshold issue we need to get
14 resolved in advance of confirmation. Dealing with it at the
15 time of confirmation doesn't seem to be the most efficient use
16 of resources, so that's the reason why we need to get this
17 addressed now.

18 (Sound played.)

19 MR. FIRESTEIN: Let me just briefly deal, because I
20 hear the beep, with the Court's concern over the overlap of
21 rulings on motions that are already pending, look, you know,
22 certainly. And we said it in our papers, there might be some
23 guidance that's based on earlier motions, but many of them are
24 not. And there are several examples to that effect.

25 The contract claims that are proposed to be submitted

1 for summary judgment, and this is not something that, you
2 know, we would air the entirety of the brief here, but there
3 are doctrines that are applicable to those -- to those counts
4 that are not necessarily briefed in the earlier ones. Whether
5 there's any liability at all in a bond, whether there's an
6 actual breach, it's not dependant on the earlier motion. Same
7 thing with respect to the tort claims, or the counts for which
8 we seek to move on. There's no evidence to support a claim
9 for fraud. Puerto Rico law requires duty for a tort claim to
10 be made. There isn't any evidence of duty. On the
11 post-petition interest and costs, it relates to the contract
12 issues that I raised above.

13 Even with respect to preemption, while there is
14 potential overlap there, the Court may not reach that issue if
15 there's no secured interest in the first motion. And it has a
16 separate and independent basis as applied to the nature of any
17 unsecured claim. The same would be true with respect to
18 disallowing claims against post petition revenue. There are
19 separate grounds for these things which we, you know, had
20 obviously hoped to have had resolved the earlier motions at
21 this time, but they're not. But that doesn't mean that there
22 isn't some basis for the claims to be addressed here.

23 I'm again cognizant of my time. I wanted to address
24 specifically the Court's issues. I think the rest of this is
25 addressed in our papers. And I'll reserve the remainder for

1 my reply.

2 THE COURT: Thank you, Mr. Firestein.

3 I have one minute for Mr. Despins for the UCC.

4 Mr. Despins? You have to unmute on both the phone and the
5 computer.

6 MR. DESPINS: Yes, Your Honor. I'm sorry that took
7 me a little bit. And I don't think I'll use the full minute.

8 I don't have much to add to what counsel for the
9 Oversight Board stated. The Committee obviously believes that
10 the revenue bonds don't have claims against the Commonwealth.
11 We believe that's an important issue before confirmation, but
12 we do understand Your Honor's point about limited judicial
13 resources and we know that you have more than a full plate.

14 So I don't think I have much more to add to the
15 discussion, Your Honor. Thank you very much.

16 THE COURT: Thank you, Mr. Despins.

17 Now I turn to Mr. Sosland for FGIC in opposition. I
18 have you down for 12 and a half minutes, Mr. Sosland.

19 MR. SOSLAND: Yes. Thank you, Your Honor. Good
20 morning. Martin Sosland of Butler Snow, LLP, for Financial
21 Guaranty Insurance Company, which holds or insures
22 approximately 900 million dollars of revenue bonds that are
23 subject to these adversary proceedings. And I refer Your
24 Honor to our objection for arguments I will not repeat in this
25 oral presentation.

1 At the outset I want to address two points that were
2 just raised by Mr. Firestein, and also by the Court. First of
3 all, with respect to proceedings that are going on outside of
4 this litigation, it's -- those proceedings, which appear to be
5 reaching seriatim resolution of issues with certain
6 bondholders, are those in which FGIC is anxious to
7 participate, but we are basically still waiting our place in
8 line.

9 Apparently, it's not only the court which has
10 unlimited resources, but also the Oversight Board. We are not
11 critical of that. They've made it clear on the papers and
12 filings in the Court that they intend to negotiate with people
13 in order. An order that's been set not by us but by them. We
14 would like to have been there earlier. We're not. But we're
15 waiting our place.

16 So when we have that opportunity, we'll see if we can
17 reach a resolution. We're certainly not -- we're hopeful that
18 we would be able to. We haven't had that opportunity yet.

19 The other remarks that Mr. Firestein made that are
20 curious is this notion that it's not a pot plan, or there's
21 no -- in terms of considering the amount that's available for
22 clawback claims. We can't really comment on that, because we
23 haven't seen the plan. What we know is that in the settlement
24 that the Oversight Board announced on April 12th, there's not
25 a settlement, an agreement in principle with certain other --

1 | certain other insurers that there is supposedly a deal to
2 | provide a plan for treatment of clawback claims. But we
3 | haven't -- again, we haven't been in the room. We haven't
4 | seen it.

5 | In the April 21st status report, the Oversight Board
6 | announced that it would file that plan by yesterday. In
7 | yesterday's status report, the Oversight Board said it would
8 | file it sometime shortly after this hearing and -- after
9 | today's hearings, and we note that the termination date for
10 | certain parties has been extended now to April 30th. We're
11 | hopeful of seeing that soon, but whether or not
12 | Mr. Firestein's representations are accurate is unknown. But
13 | -- what is accurate is unknown. We simply haven't seen that
14 | deal which hasn't yet been published or otherwise made public.

15 | So turning back to the motion, Your Honor, the motion
16 | simply makes no sense. The Court has properly teed up as
17 | gating issues those in the adversary proceedings that
18 | implicate the property rights of FGIC and other revenue
19 | bondholders, but objections to the unsecured -- the
20 | quantification of the unsecured portion, if any, of the
21 | calculable claims of financial creditors are not gating issues
22 | for confirmation. Not typically, and they should not be here,
23 | at least unless there's some serious infirmity in the yet to
24 | be filed next amended plan of adjustment.

25 | Nor does the Board offer any justification or support

1 for its conclusory assertions that could cause this -- in
2 paragraph 16 of its opening brief, the Oversight Board quotes
3 three decisions. They use words like prompt or expeditious,
4 but none support the due process proposed by the Board in the
5 instant motion.

6 The *W.R. Grace* decision upheld a confirmation order
7 against an appeal which had an injunction, a channeling
8 injunction and a trust for holders of asbestos tort claimants.
9 The federated decision approves intention of investment banker
10 to assist the Chapter 11 debtor in its reorganization efforts.
11 This Court's own decision denied a motion for lift of stay
12 filed by a creditor of the PREPA case. None of the cases have
13 anything to do with the relief the Oversight Board seeks in
14 this motion.

15 So we're giving weight to the Oversight Board's
16 proposal to which we object. The Court should consider what
17 it heard approximately 14 months ago, and what has transpired
18 since. You recall that Judge Houser, the mediation team
19 leader, recommended at the March 4th, 2020, hearing that
20 certain clawback issues in the amended report are best ruled
21 on if possible prior to the Disclosure Statement hearing.
22 That quote can be found in that transcript on page 76, lines
23 seven to eight.

24 Ultimately, the Court largely adopted the
25 recommendations of the mediation team setting a briefing

1 schedule designed to culminate in a hearing on summary
2 judgment motions scheduled on May 27th, 2020, one week before
3 the Court scheduled a hearing on the Disclosure Statement.
4 The Disclosure Statement that had actually been filed by the
5 way.

6 But before the Court ruled, there was a hearing, and
7 the parties -- before the Court ruled in its order of March
8 10th, we had the March 4th hearing. The parties objecting to
9 the amended report were heard, as were the parties like the
10 Oversight Board who supported it.

11 A major premise of the amended report and the
12 Oversight Board's position was that the gating issues were
13 clearly legal issues that could be decided as a matter of law.
14 The objecting parties, including the monolines, disagreed,
15 advising the Court that Rule 56(d) defenses would be made to
16 summary judgment motions. They also addressed the standards
17 to be applied at such an early stage of the adversary
18 proceedings when no answers had been filed, motions to dismiss
19 had been filed but stayed, the adversary proceedings would now
20 be stayed in their entirety, except for defined summary
21 judgment motions.

22 In the colloquy that can be found at page 194 of the
23 transcript, the Court pressed Board counsel when they stood
24 for rebuttal. Mr. Bienenstock argued the gating issues are
25 crisp and they're legal. And the Court then asked

1 Mr. Bienenstock, so you believe you can tee them up in a way
2 that would not support a legitimate Rule 56(b) response, and
3 Mr. Bienenstock responded yes.

4 So what has happened in the last 14 months? Rule
5 56(b) defenses were raised to the Board's summary judgment
6 motions. After lengthy briefing and a hearing, discovery was
7 ordered. The current discovery cut off date is May 19th,
8 2021, but there's a pending discovery dispute. Whatever
9 discovery is complete, the parties are to meet and confer on a
10 briefing schedule. Oh, and this is a briefing on the initial
11 gating issues that in Judge Houser's words are best ruled on
12 if possible prior to the disclosure hearing.

13 So why would the Court believe the Oversight Board
14 this time? The claim allowance issues do not involve factual
15 disputes. As Santayana wrote, those who cannot remember the
16 past are condemned to repeat it.

17 I will briefly respond to the Oversight Board's
18 assertion that we offer no principled objection to their
19 motion. I don't know that I need to read that -- to state
20 this based on the Court's initial remarks, but if the Court
21 were inclined to change its mind based on Mr. Firestein's
22 argument, I don't want to drop this.

23 So we do have a principled response, and the
24 principled objection is fairness. At the March 4th, 2020,
25 hearing and consistently since June 2019, FGIC has argued that

1 in any revenue bond litigation over our claims, we should be
2 allowed to pursue counterclaims that we originally filed in
3 stayed adversary proceeding 19-363.

4 In rebutting our argument on March 4th, 2020,
5 Mr. Firestein explained at page 197 of the transcript that the
6 gating issues were met -- were simply a matter of triage. An
7 interesting word, since he's now using that 14 months later.

8 No one here he said, is suggesting that any one of
9 the issues, the issues that FGIC was seeking to bring, are
10 waived, forfeited, or anything else. So now it's more than a
11 year later, but the Board still doesn't want us to litigate
12 our claims.

13 One note of interest which I believe Ms. Miller will
14 address more fully is there is a gating issue among those
15 contained in the Board's motion as originally filed. It would
16 be the preemption issue.

17 At the March 4th, 2020, hearing Mr. Bienenstock
18 explained, we're asking for rulings as part of confirmation
19 that statutes will be put on a list of preempted -- that's at
20 page 185, lines 18 to 20.

21 He followed with, we have to know what's preempted
22 and what's not. Otherwise, the plan can't work after
23 confirmation.

24 The preemption arguments are interesting, especially
25 the Title II preemption argued in the adversary proceedings,

1 | that a claim isn't allowable if based on an obligation not
2 | provided for in a budget approved by the Oversight Board.

3 | (Sound played.)

4 | MR. SOSLAND: I wonder, in Mr. Firestein's words, if
5 | this is really a principled argument with the Board's --
6 | complete with contradictory provisions, but for now the Board
7 | is not pressing to litigate this issue. It withdrew it in
8 | response to the PSA creditors' objection.

9 | One final note. The Court instructed us at the March
10 | 4th, 2020, hearing any party in interest may seek relief from
11 | the stays imposed by these orders upon a showing of good
12 | cause. The Court reserves the right to deny any such
13 | applications summarily, so don't get too excited about this,
14 | and make sure if you invoke it, you do it for a truly good
15 | reason. That's at page 209, lines one to six.

16 | Your Honor, there's no good reason for this motion,
17 | and it should be denied. Thank you.

18 | THE COURT: Thank you, Mr. Sosland.

19 | I now have Ms. Miller for Ambac for 12 and a half
20 | minutes.

21 | MS. MILLER: Good morning, Your Honor. Atara Miller
22 | from Milbank on behalf of Ambac Assurance Corporation.

23 | THE COURT: Good morning.

24 | MS. MILLER: Good morning.

25 | So I'm going to be brief, because, in all honesty,

1 the majority of the presentation that I was going to make was
2 focused on the -- just inefficiencies of proceeding with a
3 second round of summary judgment before getting guidance from
4 this Court, both on secured claims as well as the overlapping
5 legal issues. And in light of the Court's comments and
6 Mr. Firestein's response to them, I'm not sure I need to spend
7 much time on them.

8 I found, frankly, that Mr. Firestein's argument
9 proves the point. You know, in response, he said that there
10 may be some guidance, but many may not be raised previously;
11 that with respect to contracts claims, some applicable
12 doctrines were not necessarily briefed earlier; and that
13 preemption may not be reached by the Court. Well, doesn't all
14 of that, frankly, favor waiting to see what the Court's
15 decision is so that we can then direct our briefing to what
16 the Court has already told us its views are with respect to
17 the first round of briefing, rather than guess at whether or
18 not the Court will or will not address preemption, and to what
19 extent, as just an example. Obviously, contracts claim, CCDA
20 liens, and a whole host of other issues which clearly the
21 courts would be guided by -- the parties would be guided by
22 the Court's direction and guidance.

23 You know, the other core point that Mr. Firestein
24 tried to make, which was in response to the Court's question
25 about, you know, why is this necessary for a plan? I haven't

1 | seen a compelling presentation of that. And Mr. Firestein had
2 | a description and discussion of how this is not a pot plan,
3 | and he said that what -- the reason why we need to proceed is
4 | because we need to, quote, determine whether they are valid at
5 | any level. And then going on to say whether they'll be paid
6 | in full or not, which I'm not exactly sure how that relates to
7 | the secured claim questions that he's purporting to tee up or
8 | proposing to be teed up now.

9 | But the idea that this limited set of additional
10 | counts would resolve all outstanding revenue bond related
11 | issues, such that there would be certainty going into
12 | confirmation about whether or not it's a viable plan and
13 | whether or not there's sufficient assets to satisfy it, to the
14 | extent there was any dispute about that, that was completely
15 | gone when they withdrew their priority objection.

16 | And it -- there's no question that if they're not
17 | going to move forward on the priority preemption component,
18 | there will be massive open legal issues that will have to be
19 | decided by their own suggestion now at confirmation. And so
20 | not only would it be inefficient to move forward now, because
21 | we would need -- we should all have the benefit of the Court's
22 | guidance on the existing pending summary judgment motions, but
23 | it would also not actually lead to the efficient result that
24 | Mr. Firestein is proposing, in no small part because they're
25 | proposing to not move forward on one of the core issues.

1 And, you know, I just want to pause there for one
2 second to note that it's particularly troubling that there's a
3 suggestion that the Oversight Board is not going to litigate
4 something, because they agreed with GO Bond -- another set of
5 the creditors that they wouldn't litigate it. And yet after
6 that agreement and after entering into that PSA, they still
7 included it in a claim in their adversary complaint. And as
8 best as I can tell, they do still intend to pursue it at
9 confirmation, yet that's something that they're not going to
10 move forward.

11 And much like we agree wholeheartedly with the Court
12 that the Court is not certainly bound by any agreement that
13 the parties reach amongst themselves, no matter how heavily
14 negotiated or how unilaterally imposed by the Oversight Board,
15 Ambac certainly shouldn't be -- you know, its rights shouldn't
16 be effected and its ability to fully litigate issues shouldn't
17 be impacted by any agreement that the Oversight Board may have
18 arrived at with a different set of creditors.

19 So with that, unless Your Honor has any questions or
20 particular issues from Mr. Firestein's presentation that you
21 would like us to address, I rest on the papers.

22 THE COURT: Thank you, Ms. Miller. I have no further
23 questions.

24 So I will return to Mr. Firestein.

25 MR. FIRESTEIN: Thank you, Your Honor. Can you hear

1 me?

2 THE COURT: Yes.

3 MR. FIRESTEIN: I have not been able to see the
4 dashboard well.

5 THE COURT: I can hear you.

6 MR. FIRESTEIN: So a handful of points have been
7 made. I just want to take them in some order here.

8 With respect to Mr. Sosland's remarks about the
9 proceedings going on outside of the litigation and that his
10 client is waiting in line, as the Court's well aware, based on
11 the Court's orders, it's the mediator who sets the schedule
12 for who meets with whom. And I don't want to disclose the
13 contents of any proceedings that have gone on in the
14 mediation.

15 THE COURT: Please do not.

16 MR. FIRESTEIN: I have been -- yeah, that has been
17 the subject of some conflict and controversy in the past, but
18 suffice it to say that it is the mediation team, under the
19 guidance of the mediation team leader that makes those
20 decisions. But that doesn't mean that the litigation stops in
21 its tracks from being needed to proceed to litigation. I
22 mean, my goodness, there's obviously lots of activity that's
23 going on relative to the earlier summary judgment motions.

24 Just looking at the motions that are on tap for today
25 relative to the Omnibus, there's other activities proceeding

1 in connection with the revenue bond matter. And so the fact
2 that there are proceedings going on outside of litigation I
3 don't think dictates what it is that needs to be -- that it
4 doesn't need to be addressed in the context of this.

5 Mr. Sosland also said that, you know, he was
6 concerned over the existence of gating issues, and in fact I
7 believe in whether it was Ambac's papers or FGIC's papers that
8 they agreed that the earlier ones were in fact gating issues,
9 but he's right that the current summary judgment motions also
10 do that. But with respect to his comment about the prior
11 ones, those were filed because the monolines insisted that
12 final rulings couldn't be issued in the stay litigation.

13 So the whole purpose of that was to try to address
14 that issue that the monolines had suggested could not be
15 resolved finally in the stay litigation. The new summary
16 judgment motions are equally gating issues for confirmation.
17 Whether they have viable, unsecured clawback claims against
18 the Commonwealth, as I noted earlier, is key to whether the
19 Plan can be confirmed. And I won't repeat the issues that I
20 articulated there.

21 One of the things that Mr. Sosland said was that
22 there is an element of unfairness regarding this because of
23 their inability to litigate claims that have been filed in the
24 earlier adversary, in the 19-363 action. But all of the
25 claims for money that they could think of have been made.

1 It is those that were not previously addressed that
2 have formed the heart of the coming summary judgment motions.
3 They can't file any more. The bar date has passed. And the
4 claims that FGIC continues to harp on, the so-called equitable
5 claims or mandamus claims are a rose by any other name. They
6 are merely other ways to make a demand for claim -- excuse me,
7 for payment.

8 They made claims in the earlier action for
9 declarations to have their claims established. Claims that
10 the Board acted ultra vires by not recognizing their alleged
11 liens. Claims that the Board engaged in takings, because of
12 their lien, or violations of the Contracts Clause, because of
13 their lien, or other claims that all relate to their demand
14 for payment.

15 Putting aside the other legal failings that those
16 claims may have, the common thread is evident. As I noted,
17 they're all demands for payment. In fact, this Court
18 recognized that in the final lift stay rulings, and denying
19 defendant's motion there.

20 As the Court noted, whether supported by equitable
21 or mandamus rights or otherwise, the claims stem from their
22 bond claims, and, ultimately, are vehicles for asserting
23 rights to payment of amounts outstanding under various bond
24 issues. And that's exactly what we are trying to accomplish
25 in our intention of litigating those issues, which are brought

1 front and center to the claims that they brought in their
2 proofs of claim, which are called by any other name a demand
3 for payment.

4 Moving on to what Ms. Miller, you know, had to say,
5 there's -- you know, she referenced a number of may haves or
6 could haves. Look, there is -- you know, there may well be,
7 and I emphasize it again, a guidance that comes out of the
8 earlier motions, but as I also noted, and no one seems to have
9 particularly discounted the fact theories that are going to be
10 espoused here in the new motions that are not ones that are
11 going to be dependant on the earlier motions that are filed,
12 and the fact remains that in order to get us to confirmation,
13 we need to understand the allowability of those contract --
14 excuse me, of those contract claims.

15 If Ambac doesn't contend at confirmation that the
16 allowability of its clawback claims is necessary to know, then
17 we don't have to, you know, necessarily proceed with this.
18 But it's quite clear that that's what their intention is.
19 And, you know, when they're not resolved, I predict that Ambac
20 will be the first to say, confirmation has to be delayed while
21 its claim is determined, which is exactly what we're trying to
22 do here.

23 And so our objective is to use the word that
24 Mr. Sosland emphasized but continues to be applicable, the
25 notion of triage, which the parties can address in its

1 briefing to tee them up at a time that the Court is able to
2 address them without waiting for one set of issues to be
3 completely resolved. I mean, we may later hear that, well,
4 once this Court has resolved the secured interest issues, we
5 should wait until the First Circuit has resolved whatever
6 appeal relates to that before we go on to confirmation,
7 because it's not -- you know, it's not a final resolution.
8 You know, our goal is to do what we can in order to put this
9 on a track to meet the milestones and to get it -- and to get
10 it resolved.

11 One final observation with respect to the issue
12 concerning priority. I think we spelled out in response to
13 the PSA creditor limited objection that we don't necessarily
14 agree with them and their interpretation of this; but to be
15 fair, the priority issue, if they don't have a claim at all,
16 may or may not need to be addressed at a later point in time.
17 And our response in that was, look, that's one that we can
18 necessarily deal with at a closer point to confirmation.

19 But if -- whether it be preemption, or a failure of
20 their contract claims, or their tort claims, or any other of
21 the brush related issues that needed to be addressed prior to
22 confirmation are dealt with, it will most assuredly streamline
23 the confirmation process. This is not to suggest that there
24 isn't going to be a lot of work to be done, because for sure
25 there is going to be a lot of work. But I think, Your Honor,

1 | where this currently stands is that the Commonwealth desiring
2 | to be out of Title III, recognizing that there are issues that
3 | need to be addressed in advance of that, sensitive to the
4 | Court's resources in its ability to decide, you know, as many
5 | issues as --

6 | (Sound played.)

7 | MR. FIRESTEIN: -- we put before the Court, and the
8 | desire to get some certainty with respect to as many things as
9 | we can and as quickly as we can, are compelling reasons for
10 | the Commonwealth to be able to proceed with this.

11 | And I don't think that anything that was done in the
12 | context of the earlier permission to grant the limited summary
13 | judgment motions that are currently before the Court changes
14 | any of that. We are here today because of the factual
15 | scenario that exists now, and the plan that is presented now,
16 | and those factual circumstances had been predicted though we
17 | didn't necessarily know what the facts were going to be. And
18 | now we do. And based upon that, I think that the -- I submit,
19 | Your Honor, that while trying to alleviate the Court's
20 | concerns on its own calendaring issues, we can and should and
21 | ought to be able to do whatever we can in order to tee these
22 | issues up for adjudication before the Court sufficiently in
23 | advance of confirmation, so that the parties know what's up,
24 | who has rights to what, and whether the plan is achievable.

25 | Unless the Court has further questions, I'll submit.

1 THE COURT: Thank you, Mr. Firestein.

2 Thank you all for your arguments. I will consider my
3 ultimate decision on this after hearing the arguments with
4 respect to the UCC's cross-motion. And my intention is to
5 rule on both of those motions, which are Items 3 and 4 on the
6 Agenda, at the same time following the midday break, for which
7 we have now reached the time.

8 So I would ask that everyone, as soon as I adjourn,
9 disconnect from Court Solutions. And then dial back in to
10 Court Solutions. And for the public listeners, dial back in
11 to the AT&T number to be ready to recommence at 2:15.

12 Thank you all very much. Have a good break. We are
13 adjourned.

14 (At 11:42 AM, recess taken.)

15 (At 2:18 PM, proceedings reconvened.)

16 THE COURT: Good afternoon. Judge Swain here again.

17 MS. NG: Good afternoon, Judge. It's Lisa Ng, your
18 courtroom deputy. Sorry. Everyone's here.

19 THE COURT: Thank you, Ms. Ng.

20 So we will now resume with argument on the UCC's
21 Cross-motion for Stay Relief for Leave to File a Limited
22 Objection or in the Alternative, to Intervene. This is with
23 respect to the revenue bond litigation. It's docket entry no.
24 16403 in case no. 17-3283.

25 According to my notes, I first up have Mr. Despins

1 for ten minutes for the UCC.

2 MR. DESPINS: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. DESPINS: For the record, Luc Despins with Paul
5 Hastings for the Committee. I think I'll be very brief,
6 because obviously you've given us some guidance. And let me
7 just get to the heart of the matter.

8 I think we rise or fall with the Oversight Board in
9 terms of their motion to lift the stay in the sense that, as I
10 would like the world to be different, I don't think there's
11 any world in which we live where you would deny the Board
12 their motion and grant our cross-motion. And, therefore, I
13 don't want to spend a lot of the Court's time talking about
14 this, but there's the possibility that you would grant --
15 despite what you said at the outset of the meeting, that you
16 would grant their motion and still consider whether to grant
17 our motion, our cross-motion or not.

18 On that, Your Honor, we'll rely on our papers,
19 because, again, I don't -- I think that I understand where the
20 Court is heading, so I don't want to waste the Court's time.
21 And, therefore, I think that leaves one issue open from our
22 perspective, which is a purely procedural issue. And because
23 we believe the Committee should be allowed to file its
24 objection, but we heard the Court about the sequencing, et
25 cetera, et cetera, that -- just to file the objection, not to

1 prosecute it.

2 So we would ask the Court to authorize us to file our
3 objection, which will be largely, you know, the same thing
4 that the Board is arguing in the complaint that was filed a
5 long time ago. And we would -- and Your Honor would
6 immediately stay, upon filing of the objection, stay the
7 prosecution of that objection.

8 That would put the Committee on a procedural parity
9 with the Board at no cost to anyone really, because, you know,
10 the objection was drafted a long time ago, so there's no
11 additional cost. Nobody needs to respond to that, because you
12 would issue an automatic stay of the prosecution of that
13 objection.

14 And, obviously, that would leave open for a future
15 hearing, if there's ever a settlement that's documented with
16 Assured and the others, the issue of -- that you've dealt with
17 in PREPA, in the GO Bonds issue of whether the Oversight Board
18 can settle a matter without our objection being heard.

19 Again, I'm not naive about that. You've already
20 expressed your views very clearly on that, but I think from
21 the point of view of creating our record, that's all we ask.
22 And we believe that's a -- you know, again, it's not a big
23 ask, and it doesn't disrupt anything, because it would be an
24 immediate stay of the prosecution of objection.

25 And, therefore, unless Your Honor has questions, or

1 unless I really misread the tea leaves, I think that's all I
2 would cover in the opening, and I would reserve, you know, the
3 rest for reply. But I'm obviously happy to answer any
4 questions the Court may have.

5 THE COURT: Mr. Despins, I appreciate your brevity
6 and your focus. My only question for you at this point is why
7 now for filing and staying the limited objection, besides the
8 fact that you're prepared to do that, but is there magic in
9 this particular timing?

10 MR. DESPINS: Well, obviously, what -- so let me
11 backtrack. We believe, and you know this, and I'm not going
12 to reargue, but we have an absolute right to file objections
13 to claims, and we did not do that just because there was an
14 order staying all proceedings in the case other than what --
15 the security interest subset of issues.

16 And we refrained from filing the objection, because
17 of that stay. And obviously the case is moving on, either
18 through a potential settlement that we've heard about, but we
19 haven't really seen the documentation on, and, therefore, we
20 don't want to be prejudiced with the further passage of time.
21 And, obviously, we would like to be able to proceed with the
22 objection.

23 But I know. I'm not naive, as I said. There's no
24 way that you would deny the Board with -- the ability to move
25 forward and grant us that right. That's why I'm suggesting

1 that we just merely have the right to file it, and you
2 automatically stay it so, therefore, there's no issue with
3 the -- you know, taking the Court's time or the parties' time
4 or expenses.

5 There is a reason why now -- why now is because I
6 think procedurally we're going to be prejudiced unless we have
7 an objection on file, because then I would be left with the
8 argument that, oh, I would have filed an objection, but I
9 never did.

10 And there's no timing, there's no laches for filing
11 an objection. We have -- we believe we have an absolute right
12 to file an objection at any time, but for the fact that you
13 had entered that Stay Order. And that's why we're saying now,
14 if you're going to deny the Board's motion, then -- and
15 presumably deny our cross-motion, the only thing we're asking
16 is the right to have that objection on file that preserves our
17 argument, that that objection cannot be settled without our
18 consent, which, you know, unless things change drastically, I
19 think you will likely overrule. But we'll get to that when we
20 get to that.

21 So that's really the purpose of why now.

22 THE COURT: So you would file the objection with a
23 proposed order staying it?

24 MR. DESPINS: Correct, so there's no doubt that
25 nobody has to spend any time on it, and -- both on our side,

1 and on the Oversight Board's side, and on the defendant's
2 side.

3 THE COURT: Thank you for that clarification.

4 MR. DESPINS: So at this point, Your Honor, I'd like
5 to reserve the rest of my time, I don't know how much time I
6 have left, but for any reply.

7 THE COURT: Very well. I think what you have left is
8 about three and a half minutes.

9 MR. DESPINS: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Bienenstock for the Oversight Board.

12 MR. BIENENSTOCK: Yes, Your Honor. Good afternoon.

13 Martin Bienenstock of Proskauer Rose, LLP, for the Oversight
14 Board. I only have four minutes, so I will go quickly, and
15 factoring in, of course, Your Honor's -- Your Honor's comments
16 at the outset.

17 Your Honor, there's a fundamental difference between
18 the Oversight Board's motion and the Committee cross-motion.
19 The Oversight Board's sole goal is to resolve issues that will
20 very likely prevent confirmation if left unresolved.
21 Conversely, the Committees motion is to gain leverage.

22 Plain and simple, the Committee is looking to object
23 to claims settled or being settled. That would put the
24 Committee in a position to tell the Board that if the Board
25 wants to retain its settlements, it must pay more to certain

1 of the Committee's constituencies.

2 That is exactly the wrong reason for the Committee to
3 get stay relief. We submit the Court did not merely four
4 years ago assemble a dedicated team of judicial mediators so
5 the Committee can threaten to wreck each of its settlements
6 unless Committee constituencies get what they demand.

7 The Bankruptcy Code already provides the Committee
8 with its means of objecting. If the Committee's
9 constituencies reject their treatments under a plan, the
10 Committee can object to the settlement and/or object to the
11 plan on the ground of unfair discrimination, that other
12 creditors are treated better without justifiable reason. The
13 Committee has no valid ground for the extra leverage it is
14 requesting in its motion.

15 The second point is the Committee's threshold
16 assumption that 502(a) grants it standing to file an objection
17 just like the Board can is all wrong. We cited the First
18 Circuit's decision *In re Thompson* in our response, where the
19 First Circuit said that no creditor can file a claim objection
20 unless the Court says it can, because the Trustee, or in our
21 case, the debtor, is failing to do so.

22 So the request for it to just file, assuming that it
23 could file an objection like the Board can, is just contrary
24 to the existing law. And tellingly, in the Committee's
25 reply --

1 (Sound played.)

2 MR. BIENENSTOCK: -- it ignores *In re Thompson*
3 altogether. Doesn't even address it.

4 Last and most important -- well, next to last point,
5 Bankruptcy Code Section 502(a) does not grant standing to the
6 Committee to object to claims is proven by logic. If the law
7 were as the Committee contends, that the debtor and any number
8 of parties at interest can object to a claim, what would
9 happen if the debtor wants to settle and the Committee or
10 other objectors do not?

11 It cannot be that Section 502(a) gives a veto power
12 to every party in interest. The Committee's pleadings and
13 argument today provide no answer, because the only answer is
14 the debtor or trustee is in control, whether the Committee
15 intervenes or not.

16 Finally, while the Board hopes the Court will grant
17 its motion and deny Committee's cross-motion, if the Court
18 denies both motions, we ask the Court advise us when we can
19 ask again. We urge the Court, instead of denying the Board's
20 motion, to let the parties proceed on new summary judgment
21 pleadings back and forth while the Court schedules hearings,
22 as its time and resources allow, whatever that is.

23 That way, the issues will be ready for resolution
24 whenever the Court finds it is practicable to deal with them.
25 That may well save the ability to confirm a plan in calendar

1 year 2021.

2 Unless the Court has questions, that's all I have,
3 Your Honor.

4 THE COURT: Thank you, Mr. Bienenstock. I now have
5 Mr. Natbony for Assured for two minutes.

6 MR. NATBONY: Yes. Thank you, Your Honor. And good
7 afternoon. For the record, William Natbony from Cadwalader on
8 behalf of Assured.

9 In light of Your Honor's prior comments, there are
10 really two points here: One dealing with timing and the other
11 dealing with denying the Committee's motion, being consistent
12 with Your Honor's prior orders in *PREPA* and *ERS*, and even one
13 in the *Commonwealth* case.

14 I would echo Your Honor's up front comments and join
15 in the Board's arguments to deny the Committee's cross-motion.
16 As the Court has previously done with respect to similar
17 motions relating to *PREPA* and the *ERS* cases, and the
18 *Commonwealth*, this Court should continue to reject these
19 efforts as improperly timed.

20 The Court has three times before prevented the
21 Committee from litigating claim objections prior to evaluating
22 a Board proposed settlement, and the same circumstances exist
23 here. I echo Mr. Bienenstock's comment that the Committee
24 will have its opportunity to address its issues as part of the
25 confirmation process. And increasing the scope and process of

1 litigation here and now, even on counts that are the subject
2 of the settlement in principle, currently being documented by
3 the various parties, would interfere with settlement efforts
4 and undermine the promotion of settlement.

5 Indeed, the Committee's sudden timing here, after
6 knowing for more than a year that these counts could
7 potentially have impact on them is significant. They filed
8 their motion directly on the heel, in fact, one day after the
9 announcement of the settlement in principle. And we think
10 that that speaks volumes.

11 As to the intervention request, Your Honor, we also
12 believe that any participation that the Court would order, if
13 at all, should at least be in accordance with the limitations
14 that Your Honor set forth in footnote three of the March 10,
15 2020, case management order --

16 (Sound played.)

17 MR. NATBONY: -- and prior interventions orders in
18 these cases.

19 Thank you, Your Honor.

20 THE COURT: Thank you. We next have Mr. Berezin for
21 National for two minutes.

22 MR. BEREZIN: Yes, Your Honor. Actually, I think I
23 have a minute. But in any event --

24 THE COURT: Okay.

25 MR. BEREZIN: -- hopefully one day you'll give me

1 credit for that minute in another argument. Robert Berezin,
2 Weil, Gotshal & Manges on behalf of National Public Finance
3 Guaranty Corporation.

4 Your Honor, the only point I'll make, and be brief,
5 is that there really is no good cause to lift the stay, even
6 for the limited purpose of filing a claim objection for all
7 the reasons that Mr. Bienenstock articulated.

8 We certainly agree with those reasons. And as one of
9 the parties that is working very, very hard to reach, and
10 document, I should say, a settlement in principle that we
11 believe would be a true milestone in these cases, not just the
12 Commonwealth, but also potentially HTA, that any action by the
13 Committee in regard to a claim objection for filing any sort
14 of additional pleadings in the adversary could destabilize,
15 undermine really important settlements that otherwise could
16 occur. And we would urge the Court to follow the Court's
17 earlier rulings in these cases and deny the Committee's
18 motion.

19 Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Berezin.

21 Now Ms. Miller for Ambac. I have you down for two
22 minutes, so tell me if that's wrong.

23 Ms. Miller, you need to unmute on the phone and the
24 dashboard.

25 MS. MILLER: Can you hear me now?

1 THE COURT: Yes, I can.

2 MS. MILLER: I think that's right, Your Honor. For
3 the record, Atara Miller from Milbank on behalf of Ambac
4 Assurance Corporation.

5 I want to make just two quick points, and otherwise,
6 we'll rest on our papers on this. The first one with respect
7 to Mr. Despins' modified request for a lifting of the stay,
8 solely for purposes of filing the objection, I would note our
9 position that while -- you know, whether or not they have an
10 absolute right to file an objection doesn't mean that whatever
11 rules govern intervention in the obligation of a party to
12 state all of the claims with respect to which it intends to
13 intervene, and all of the allegations that it had to do that.
14 And to the extent that the Committee failed to do that in
15 connection with its initial intervention in these adversaries,
16 that request is untimely now.

17 And you can't cure that by filing an objection,
18 which, as Mr. Despins characterized, would be essentially a
19 mirror of the claims already asserted in the adversary in
20 which the Committee has intervened.

21 And the second point, briefly, I heard
22 Mr. Bienenstock in his -- in his discussion put out a new or
23 modified request with respect to the motion that we previously
24 argued, asking for the Court to identify a time for a briefing
25 or allow briefing now so that everything is ready for the

1 Court's resolution, because that, quote, may well state the
2 ability to confirm a plan in calendar year 2021.

3 I would note that confirming a plan, I think
4 everybody would like a plan to be confirmed as quickly as
5 possible, but calendar year 2021 is arbitrary.

6 And the second point I would say is that that
7 highlights the inefficiency of the proposal. I mean, I don't
8 think there's any dispute. And Mr. Firestein, in his reply,
9 reiterated that there certainly would be at least some credit
10 and benefit and efficiency to hearing what the Court would --
11 is going to say on the currently pending summary judgments,
12 and the idea that we're going to brief it so that everything
13 sits in the ether, so that one day when the Court has time,
14 you know, on a Sunday morning pause, it can start looking at
15 these cases --

16 (Sound played.)

17 MS. MILLER: -- to see if it's the wrong way to
18 proceed. And with that, I'll rest.

19 THE COURT: Thank you, Ms. Miller.

20 Mr. Sosland for FGIC, I have you down for two minutes
21 as well.

22 MR. SOSLAND: Thank you, Your Honor. Martin Sosland,
23 Butler Snow, for FGIC.

24 Simply put, Your Honor, the motion should be denied.
25 The Court's prior motion granting intervention to the UCC in

1 these adversary proceedings needs to be neither modified nor
2 aggregated. Other than that, we'll rest on our papers.

3 In response to Mr. Bienenstock's rearguing of their
4 motion after argument had closed, I think that was
5 inappropriate. I won't respond to it further other than to
6 say that motion should be denied for the reasons previously
7 argued in those papers. Thank you.

8 THE COURT: Thank you.

9 Mr. Despins, I return to you for up to five minutes.

10 MR. DESPINS: Thank you, Your Honor. And hopefully
11 it will be shorter than that.

12 Let me just address the various points that were made
13 hopefully briefly. The first one about gaining leverage, when
14 the Board filed this motion to modify the Stay, we told them
15 in writing immediately within a day that we would want to file
16 this cross-motion. That was before the settlement with
17 Assured was announced. So that's the first point.

18 And also, when we intervened in the Complaint like, I
19 forget, probably a year or more ago, we said in there that we
20 were not intervening in the objection, quote, unquote, type
21 claims that the Board chose to put in the Complaint, but that
22 we reserve our right to do so. So we telegraphed a long time
23 ago that this was a live issue.

24 And I want to be clear, we're not talking about
25 litigating these claims. We're talking about the mere filing

1 of an objection, nothing more. Mr. Bienenstock seemed to be
2 insulted by the fact that we were going to wreak havoc with a
3 settlement reached. But, you know, Your Honor, you need --
4 you know that we're being offered 125 million dollars for
5 billions and billions of dollars of claims, while the Board is
6 giving other constituents --

7 THE COURT: Mr. Despins, I don't want anybody talking
8 about the substance of positions in mediation.

9 MR. DESPINS: No. No, Your Honor. This is in the
10 Disclosure Statement. There's an offer --

11 THE COURT: Okay.

12 MR. DESPINS: There's an --

13 THE COURT: You're talking about the Disclosure
14 Statement. Okay.

15 MR. DESPINS: Yes. Yes. Yes. I'm sorry, Your
16 Honor. Yes. No, I would never -- so this is -- the 125
17 million is in the Plan Disclosure Statement. That's what's
18 being offered to our constituents. And, therefore, obviously
19 the Committee has no choice but to try to do what it can to
20 improve its position.

21 Now, the argument that Mr. Bienenstock made about 502
22 and *Thompson*, Mr. Bienenstock sees that present -- *Thompson* is
23 a Chapter 7 case, and the First Circuit was pretty clear about
24 the import of that. And it's very relevant here, because in
25 Chapter 7, the Trustee has the exclusive right to file

1 objections under 704. And 704 is imported in Chapter 11,
2 Chapter 11 of PREPA, through 1106.

3 But as we've made the argument that there's plenty of
4 time, 1106 is not imported in PREPA -- sorry, in PROMESA, and
5 therefore, that argument, the *Thompson* argument doesn't apply
6 in PREPA because -- sorry, in PROMESA, because 1106 has not
7 been incorporated by reference.

8 But nevertheless, we're not asking the Court to rule
9 that we have a veto or anything like that. That's for another
10 day. And by the way, we're not naive about how that line of
11 argument will probably go. But the point is that we're not
12 asking the Court to rule on that today at all. And I -- if I
13 remember correctly --

14 (Sound played.)

15 MR. DESPINS: -- in PREPA, the Board made the same
16 argument, and Your Honor stayed away from it, meaning you did
17 not rule on that basis. You ruled on the basis that there was
18 a settlement.

19 Here, there's no settlement before the Court today.
20 People talk about a settlement in principle. We haven't seen
21 the terms of that, and, therefore, we have an absolute right
22 to file, not necessarily to prosecute, the objection. And --

23 THE COURT: You've made that -- you're making that
24 point that you're taking that position abundantly clear for
25 the record. You have your proposal of an objection of record

1 in connection with this motion, at least conceptually. So to
2 the extent you want a record that you haven't given up and you
3 believe it's something that you can do, that's there under --
4 and there are clearly controversies as to whether you can do
5 it. You yourself are proposing that those not be litigated
6 now.

7 There would be presumably some arguments about
8 whether the Court permitting you to file it is in some way an
9 acceptance of your position that you have a right to do that.
10 That seems like a little nest that's unnecessary to build
11 right now.

12 MR. DESPINS: I -- with all due respect, Your Honor,
13 obviously you're the Judge, you're making the decisions, but I
14 don't think that's what we're asking the Court to recognize as
15 an absolute right. The point is there's a difference between
16 having an objection on file, which the Court chooses to
17 disregard in favor of an eventual settlement, and we
18 understand that, and having --

19 (Sound played.)

20 MR. DESPINS: -- no objection on file. I think that
21 that is the unfairness of this, which is that we're not even
22 allowed to have that procedural step.

23 And I'll close on that, Your Honor. Thank you.

24 THE COURT: Thank you very much. So I will make my
25 oral ruling now.

1 Pending before the Court is the Motion of the
2 Commonwealth of Puerto Rico, by and through the Financial
3 Oversight and Management Board, for Stay Relief Granting Leave
4 to Prosecute Further Motions for Partial Summary Judgment,
5 which is docket entry no. 16326 in case no. 17-3283. I'll
6 refer to that as The Motion. It's filed by the Financial
7 Oversight and Management Board for Puerto Rico.

8 Also, I have before me the Official Committee of
9 Unsecured Creditors' Urgent Cross-motion for Stay Relief
10 Granting Leave to File Limited Objection, or in Alternative,
11 to Intervene, docket entry no. 16403, which I'll refer to as
12 the Cross-motion, which has been filed by the Official
13 Committee of Unsecured Creditors, which we often refer to as
14 the UCC.

15 The Court has reviewed the relevant pleadings and
16 listened to the arguments carefully. The Court now makes its
17 oral ruling as to the motion and the cross-motion, and
18 reserves the right to make non-substantive corrections in the
19 transcript of this ruling.

20 For the following reasons, the Motion and the
21 Cross-motion are denied. The Motion requests partial relief
22 from the litigation stay imposed by the Court in March of 2020
23 in three adversary proceedings, so that brief summary judgment
24 motions concerning certain counts pleaded by the Oversight
25 Board, through which the Oversight Board seeks disallowance of

1 unsecured claims asserted in the defendant's proofs of claim.
2 The Cross-motion supports the relief sought in the Motion, but
3 additionally asks for permission to file claim objections
4 concerning the same matters on which the Oversight Board seeks
5 to commence summary judgment motion practice. In the
6 alternative, the Cross-motion requests authority to intervene
7 in the summary judgment motion practice.

8 The litigation stay from which the Oversight Board
9 seeks relief excepted only a relatively narrowed set of issues
10 from the stay, and was imposed by the Court with the support
11 of the Oversight Board and over the objection of several
12 parties, to aid in the orderly resolution of crucial issues
13 concerning the defendant's rights with respect to revenue bond
14 holdings.

15 The goal is to allow important issues of law to be
16 resolved in anticipation of the confirmation process in
17 connection with the Commonwealth's Amended Plan of Adjustment
18 in 2020. Although the plan confirmation process was
19 interrupted by the novel coronavirus pandemic and the summary
20 judgment motion practice has taken a detour for limited
21 discovery, the Court believes that the rationale underlying
22 the litigation structure imposed in 2020 still makes sense.

23 The Oversight Board and the UCC have not provided
24 compelling reasons to lift the litigation stay and expand the
25 scope of litigation at this stage. As the Court explained

1 towards the beginning of this Omnibus Hearing, its resources
2 and the parties' resources are not unlimited.

3 The Oversight Board has requested an expeditious
4 schedule with respect to confirmation of its further Amended
5 Plan of Adjustment, in part due to deadlines set in plan
6 support and settlement agreements that it negotiated. It is
7 simply not possible to litigate every outstanding dispute
8 while maintaining anything like the schedule recommended by
9 the Oversight Board. The Oversight Board and the UCC have not
10 demonstrated the necessity of cueing up briefing on their
11 chosen disputes concerning the liquidation or disallowance of
12 the claims that are the subject of The Motion and Cross-motion
13 at this point.

14 The UCC's request to file and stay claim objections
15 is also denied at this juncture. Among other things, as the
16 Oversight Board has pointed out, the substantive issues that
17 are key to the described proposed objections can be litigated
18 in a confirmation context. As we have heard, there are
19 controversies which the Court need not address today
20 concerning whether there is a right to file them in the first
21 place.

22 The Court will expect that after the currently
23 pending summary judgment motions in the revenue bond
24 litigation have been resolved, it will be appropriate to look
25 at what further litigation in what form is necessary in

1 connection with the revenue bond issues. Accordingly, the
2 Court will enter an appropriate order denying the Motion and
3 the Cross-motion. Thank you.

4 So now we turn to the debtors' joint motion to
5 schedule a hearing concerning the adequacy of information
6 contained in the Disclosure Statement. That motion is docket
7 entry no. 16332 in case no. 17-3283, and this is Item II.5 on
8 the Agenda.

9 I first have Mr. Rosen for the Oversight Board for 15
10 minutes.

11 Mr. Rosen, you need to unmute your phone and your
12 dashboard, as I still can't hear you.

13 MR. ROSEN: Judge, can you hear me?

14 THE COURT: I can hear you now.

15 MR. ROSEN: Thank you, Your Honor. I'm so sorry
16 about that.

17 Your Honor, thank you very much for your indication,
18 your ruling earlier today, because that significantly reduces
19 the amount of time that I'll be speaking. So I'll be well
20 beneath the 15 minutes.

21 Your Honor, there were a few questions that actually
22 arose as a result of what you said, but let me first address
23 your comments. The Oversight Board has no issue, Your Honor,
24 whatsoever with a 28-day notice period, and a response two
25 weeks after that, and having the hearing on June 29.

1 The question that I had, Your Honor, is trying to
2 reverse engineer this. That, would it be all right with the
3 Court if we were to, just based upon what you've heard a lot
4 about already from people, the documentation associated with
5 the agreement in principle with Assured and National in there,
6 the corresponding Plan of Adjustment, and Disclosure Statement
7 changes as a result of that, would it be possible, Your Honor,
8 if the latest date that we would file that reply with the
9 Court would be either June 24th or June 23rd, providing the
10 Court, therefore, with six or five days advance of the
11 replies? That -- I'm sorry.

12 THE COURT: Mr. Rosen, I will just tell you, the
13 Court needs two weeks with the papers, because, you know, the
14 Court needs to focus on the motion, and the arguments, and the
15 Plan, and Disclosure Statement in the context of those
16 arguments for efficiency sake.

17 The Court has other things going on all the time,
18 some of which I know about now and some of which I won't know
19 about until that time frame. So if you need further time to
20 file the plan, we would need to look at a date a little bit
21 further out for the hearing, because I need two weeks.

22 MR. ROSEN: I'm just working backwards, Your Honor.
23 So that would mean that our last date would be June 15 to
24 provide it to you. And then that would mean that we would
25 file it no later than May 18. And I think -- I think if my

1 | dates are correct, I think that's eminently doable, Your
2 | Honor. That's fine.

3 | THE COURT: All right. Are you sure that takes into
4 | account everything? Because it would be you file, there would
5 | be 28 days to the opposition deadline, then two weeks after
6 | that. So that's six weeks to your reply, and then I'd still
7 | need two weeks to my hearing date.

8 | MR. ROSEN: Right. So I counted back six weeks from
9 | the 29th, Your Honor, 15 -- wait. Hold on. Yeah.

10 | THE COURT: It needs to be eight weeks. It needs to
11 | be eight weeks, because you have four weeks to opposition --

12 | MR. ROSEN: Oh, you're right. You're right. I
13 | apologize, Your Honor. So that means we would have to file
14 | the plan, Your Honor --

15 | THE COURT: By the 4th.

16 | MR. ROSEN: -- by May 4th, which means I look forward
17 | to spending a lot of time with a lot of people over the next
18 | few days.

19 | THE COURT: Well, you're all getting to know each
20 | other so much better, I'm sure, over the past two weeks. So
21 | yes, to hold June 29 as the hearing date, you have to file the
22 | plan by May 4th.

23 | MR. ROSEN: All right, Your Honor. We will do our
24 | best. Thank you for clarifying that.

25 | Your Honor, with respect to your own other comments

1 about striking paragraph seven, or a portion of it, we have no
2 problem with that, and we've already set pen to paper to try
3 to make those changes. We moved the definition or the usage
4 of producing party, and we will modify the notice to reflect
5 that no one who -- unless a party files an objection, they
6 will be unable to speak. And we will deal with the
7 modification of the service list to be consistent with the
8 case management order.

9 Your Honor, we set forth in our reply, in chart form,
10 and in the back, Your Honor, as well as up front, some of the
11 responses that we had to the six objections that have been
12 filed. Some of them were just date oriented objections, so
13 they really don't need to be dealt with here, because I think
14 the Court has already given us its perspective with respect to
15 June 29. There were several, however, that dealt directly
16 with the data root issues themselves and the purported
17 difficulty associated with that.

18 And for someone who is technologically challenged
19 like I am, I must tell you that I was able to get through the
20 process within 30 seconds. It truly is just a click away to
21 make this thing happen.

22 There is a reference or a request by Mr. Hein that
23 you shouldn't need to be a creditor to be involved in and
24 looking at all this information, and media personnel should be
25 entitled to it as well.

1 Your Honor, we have issues with that. We think that
2 really only parties in interest, which are the committees in
3 this case, as well as creditors, should have the opportunity
4 to review this information. We ask merely for the
5 certification that people are creditors. And if, in fact,
6 people -- and that is just a click here or a click there, and
7 that takes you to another screen.

8 But, Your Honor, to the extent that someone is asking
9 for access to confidential information, we ask that the --
10 that the protective order, which is a very, very short form,
11 and it is very minor in comparison to the prior protective
12 orders that this Court has already entered in this matter,
13 just to get access to the confirmation, and from there, the
14 confidential information.

15 There was a statement, Your Honor, in several of the
16 objections, or at least two of them, and certainly by Ambac,
17 that -- and the Committee that the data room should not be
18 also a replacement to any discovery request that they seek to
19 propound. And we're not trying to do that, Your Honor. We've
20 done this in other very large cases, and it's proved to be
21 extremely beneficial. Actually, cases where some of these
22 firms have been involved and they've supported the idea.

23 But, Your Honor, we're not looking to stop them from
24 serving us with any additional discovery requests. Likewise,
25 we're not seeking to be bound, and not to say that we won't

1 object to those discovery requests and seek to have the
2 Court's or Magistrate Dein's intervention with respect to
3 those, because we do think they will be inappropriate and
4 unnecessary for Disclosure Statement hearings.

5 So my point was, all parties would be in the position
6 that then, even if the data room had not been in existence --
7 although, of course, we'll be able to point to the fact that
8 most of the information that they'll probably be requesting
9 will already be in the data room, and they should take a look
10 at it ahead of time before they serve a discovery request.

11 Your Honor, with that, honestly, I don't mean to
12 burden the Court with any more argument here. We think that
13 our papers are extremely responsive to the various requests
14 that have been made. And, therefore, Your Honor, I'd like to
15 reserve my time for any responses that may be necessary.

16 THE COURT: Just one -- let's see. I'm sorry. I
17 thought that there was another point that I wanted to raise
18 for you. That is the paragraph seven issue, so forgive me for
19 holding you up there. I will talk to you again on your reply
20 argument.

21 MR. ROSEN: Thank you, Your Honor.

22 THE COURT: Thank you. So at this point, I will turn
23 to Mr. Despina, who I have down for seven minutes.

24 MR. DESPINA: Thank you, Your Honor. And it will be
25 a fraction of that, because I think you've resolved our

1 issues.

2 The only point I wanted to make is that there was a
3 discussion of 28 days from filing. I think it's 28 days from
4 service. I don't want to make Mr. Rosen's life harder, but I
5 just -- there's a big difference between filing and service,
6 as he is aware. So that's the only point I would make.

7 Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Amend or Mr. Zouairabani for the DRA claims.

10 MR. ZOUAIRABANI: Yes. Good afternoon, Your Honor.
11 For the record, Attorney Nayuan Zouairabani of McConnell
12 Valdes, LLC, on behalf of AmeriNational Community Services,
13 LLC. With me today is my co-counsel, Peter Amend, from
14 Schulte, Roth & Zabel, LLC, in representation of Cantor-Katz
15 Collateral Monitor, LLC.

16 Your Honor, I think most of the issues that we wanted
17 to cover, the Court -- you know, we discussed it as part of
18 the Court's initial remarks this morning. We agree with the
19 Court's remarks, and it seems that it's been clarified that
20 the 28 days, and just to make sure that I got it right, would
21 run from the filing of the Further Amended Disclosure
22 Statement and the filing of the Disclosure Statement approval
23 motion.

24 And if that were to be the case, that definitely
25 should take care of affording parties sufficient time. Having

1 said that, Your Honor, I would like to comment briefly on the
2 fact, because it's a running theme on these cases, that at the
3 end of the day, even though this hurdle seems to be resolved,
4 there's a continuing situation that we have with these cases
5 going forward.

6 At the end of the day, the FOMB needs to follow the
7 rules with regard to the Disclosure Statement, and the process
8 needs to be fair to all involved, not just for the PSA
9 parties. We're concerned with this continuing approach of
10 trying to encroach everyone's rights to accommodate artificial
11 time constraints in the PSA. And as the Court noted, these
12 deadlines have no real bearing on these proceedings.

13 There are several reasons that support this. First,
14 while the PSA expects that the plan will be effective by
15 December 15, it also recognizes that this date can be pushed
16 back if needed. For example, the PSA currently contemplates
17 for the effective date to be extended until January 31, 2022.

18 Second, the PSA's proposed effective date is
19 aspirational, and could be easily undone by factors outside of
20 the control of the PSA party. For instance, the second
21 amended plan legislation to be approved by the Puerto Rico
22 legislature. And as prior experience has shown, the FOMB
23 cannot force the PR legislature to legislate on command.

24 These deadlines are neither sacrosanct nor binding in
25 these cases, Your Honor, and the FOMB cannot use them to

1 steamroll parties' due process rights in evaluating the
2 Disclosure Statement of the largest municipal bankruptcy in
3 U.S. history. And as we've seen, it's in a constant state of
4 flux and affects hundreds of thousands of different
5 stakeholders.

6 And the FOMB has created this problem themselves,
7 Your Honor. Parties in this case should not bear the cost of
8 FOMB's decision to go forward on arbitrary PSA milestones, an
9 Amended Disclosure Statement Plan that has not even been filed
10 yet, and it seems based looking back, that they'll do that by
11 May 4th. So we'll look forward to that. And whenever that
12 happens, the parties will need time to review it to determine
13 how it impacts us.

14 With that, I will yield my remaining time to my
15 co-counsel, Peter Amend.

16 THE COURT: Thank you.

17 MR. AMEND: Thank you. Good afternoon, Your Honor.
18 As Mr. Zouairabani noted, my name is Peter Amend from Schulte,
19 Roth & Zabel on behalf of Cantor-Katz Collateral Monitor.

20 I'll sort of follow up briefly on remarks made by my
21 co-counsel. We just want to note that whether -- and we
22 support the June 29 Disclosure Statement hearing date, but we
23 just want to be clear that whether this date should continue
24 to hold just depends on whether the Board can comply with the
25 applicable rules. And, you know, given the circumstances here

1 in this case --

2 (Sound played.)

3 MR. AMEND: -- we think that any sort of future
4 attempt to reduce a 28-day notice period should not be
5 permitted. Just generally speaking, under Rule 9006(c),
6 courts have to consider primarily the prejudice that would
7 potentially result to the parties if the notice period is
8 reduced. And the burden was on the proponent of the plan, not
9 parties reviewing the Disclosure Statement in order to have
10 the notice period shortened.

11 So, for example, in the case out of Bankruptcy Court
12 in the Eastern District of Arkansas, *Tim Wargo & Sons*, 107
13 B.R. 622, the Court did not find cause to shorten the
14 Disclosure Statement notice period when the debtor waited
15 until the 11th hour to file a disclosure statement and plan.

16 And on the flip side, courts generally permit
17 shortening these periods when the debtor or its creditors
18 would otherwise be extremely prejudiced. And as an example
19 for that, a case out of the Southern District of Florida
20 Bankruptcy Court, *In re: Florida Coastal Airlines, Inc.*, 361
21 B.R. 286. The court held that -- the court permitted a
22 shortened disclosure statement notice period, because the
23 debtor could have otherwise lost its airline operating
24 licenses.

25 So I guess just in short and to sum this up, you

1 know, we argue here that the Court should permit the Oversight
2 Board to have the Disclosure Statement hearing on the 29th, if
3 the Board files its Further Amended Plan, Disclosure Statement
4 and Motion to Approve the Disclosure Statement, consistent
5 with the Rules.

6 So thank you, Your Honor, for your time. And I'm
7 happy to address any questions that the Court may have.

8 THE COURT: Thank you, Mr. Amend. I have no
9 questions for you on this.

10 MR. AMEND: Thank you.

11 THE COURT: So next on my list is Ms. Miller for four
12 minutes.

13 MS. MILLER: Good afternoon, Your Honor. Again,
14 Atara Miller from Milbank on behalf of Ambac Assurance
15 Corporation for the record.

16 THE COURT: Good afternoon.

17 MS. MILLER: In light of Your Honor's opening
18 comments at the beginning of today's Omnibus Hearing, and in
19 particular Mr. Rosen's representation, which we appreciated,
20 in the reply as well, that the proposed data room is not
21 intended to displace entirely requests from potential
22 objecting parties, the only thing that we would note is we
23 continue to believe that 28 days in this case for this
24 Disclosure Statement is aggressive. And that if the parties
25 are going to keep to that, there needs to be discipline and

1 cooperation in terms of getting the -- in terms of getting the
2 relevant materials to parties to review.

3 And so we're not opposed to the data room as a
4 starting point, but given the limited time -- and we would, of
5 course, expect, as Mr. Rosen stated that he does as well, that
6 the document -- that we would have a sense of what's being put
7 in the data room before just propounding discovery. I mean,
8 nobody wants to duplicate efforts, and nobody wants to ask the
9 government or the Oversight Board for materials that have
10 already been made available. But we would ask that rather
11 than just do a data dump, that there be some guidance or index
12 provided, or a description of the nature of the documents that
13 are submitted, because I expect that it may be voluminous, and
14 it may take a good amount of time just to get our hands around
15 what has been put into the data room.

16 And, you know, I just don't want that to delay being
17 timely in getting additional requests out. I mean, it's
18 already clear based on the charts that it's not going to
19 include a number of categories and documents that we've
20 indicated would be relevant. And we're likely going to have
21 to set up a process hopefully with Judge Dein to get those
22 disputes resolved. But I do think that we need to set up a
23 protocol that has it move forward as expeditiously and
24 efficiently as possible.

25 THE COURT: So let me --

1 (Sound played.)

2 THE COURT: -- ask you one thing. I believe I saw in
3 the data room, elements of the proposed order, an indication
4 that there would be some sort of electronic indexing of the
5 material in the data room, the public material and the
6 confidential material, to find what has been proposed
7 insufficient.

8 MS. MILLER: So I wasn't, frankly, exactly sure what
9 they meant by -- two things troubled me. First, I wasn't sure
10 what it meant by saying that they were going to be put in
11 folders, and whether that was going to have a description of
12 the nature of documents, or just something more broad that
13 wasn't really going to be able to indicate whether or not --
14 you know, let us really understand what documents are in or
15 what documents are not, like raw data, for example.

16 Clearly, they've said they're going to produce some,
17 but not all. It's going to take a lot of time for us to
18 download raw data and get experts looking through it to figure
19 out what we have if there isn't a description of what the raw
20 data is. So, you know, a bucket that says documents
21 underlying the fiscal plan, for example, is not going to be
22 particularly helpful or insightful. So I am concerned about
23 the degree of description.

24 You know, the other thing that troubles -- that I
25 guess I'm uncertain about is the representation that they'll

1 give that, but that they take no responsibility for it being
2 right or wrong, sort of similar to the disclaiming of any
3 responsibility for the accuracy. You know, I'm not exactly
4 sure what to do with that.

5 THE COURT: Well, they -- we're striking paragraph
6 seven. Paragraph six says that they shall use their
7 reasonable, best efforts to place documents in the depository,
8 to categorize documents by topic. There'll be disclaimers
9 stating that they're not responsible for miscategorization of
10 anything, and the creditor should not rely upon the
11 categorization, and should review all categories in their
12 entirety.

13 Are you objecting to that disclaimer language and to
14 the generality of the undertaking to categorize documents by
15 topic?

16 MS. MILLER: If there --

17 THE COURT: I want Mr. Rosen to be able to -- and
18 we'll go on for a couple minutes.

19 MS. MILLER: Okay.

20 THE COURT: I want Mr. Rosen to be able to respond as
21 meaningfully and specifically as he can when he comes back.

22 MS. MILLER: Right. So, you know, I've been on the
23 other side of a very large document production, and I
24 understand the undertaking and I'm sensitive to it.

25 So, you know, if that's the only information that

1 we're going to get about the documents, I have an objection
2 both to the broad topic description, as well as the limitation
3 of, you know, best efforts. But we make no representation.

4 My proposed solution was that rather than imposing a
5 burden on what may be a significant amount of documents and
6 volume of data that's going into this database, for there to
7 potentially be sort of a separate description of the
8 categories and the nature of the documents that are proposed,
9 rather than just a topic to which those documents relate as an
10 alternative.

11 So I'm okay keeping that in the order if it comes
12 with something else if Mr. Rosen isn't willing to provide
13 additional information about the documents, but I have an
14 objection to that paragraph there.

15 THE COURT: Thank you for clarifying that.

16 All right. May I move on to Mr. Sosland now,
17 Ms. Miller?

18 MS. MILLER: Yes. That's all I had. Thank you, Your
19 Honor.

20 THE COURT: Thank you.

21 Mr. Sosland.

22 MR. SOSLAND: Good afternoon, Your Honor. Martin
23 Sosland from Butler Snow for FGIC.

24 We had a couple points in our objection. The one to
25 notice, I believe, based on the colloquy, the Court's already

1 ruled on, so I won't spend any time on that.

2 And the second, which related to the discovery
3 procedures, in our objections that we thought they were not
4 even -- they were more appropriate for confirmation, rather
5 than for the Disclosure Statement, but there's been enough
6 detail on them at the hearing, that to hear that objection is
7 getting any traction and -- although that's what we believe.
8 And, for example, in the *Enron* case, the procedures that were
9 mentioned in the motion were actually approved a month after
10 the Disclosure Statement was approved and did relate to
11 confirmation.

12 It sounds like we're talking about the Plan.
13 Accordingly, the other parties -- what the procedures are for
14 this. So I won't take up the Court's time with our objection,
15 other than it remains that. I would note that these
16 procedures, on their face, say that they are -- solely relate
17 to use of the information in this data room --

18 (Sound played.)

19 MR. SOSLAND: -- for the disclosure hearing and,
20 therefore, if we have a similar motion or proposed procedures
21 in connection with confirmation, we reserve our right to
22 address those at that time. Thank you.

23 THE COURT: Thank you.

24 Now, Mr. Hein we have for two and a half minutes.

25 MR. HEIN: Your Honor, this is Peter Hein. Three

1 topics.

2 THE COURT: Yes.

3 MR. HEIN: On the depository, the debtors are seeking
4 a protective order that would shield even an index to
5 supposedly confidential documents, but there's no
6 justification for shielding an index of confidentiality
7 concerns. Of full bank account numbers and the like, those
8 could be addressed by redaction. They do not justify
9 confidentiality for entire records, much less an index.

10 Confidentiality restrictions that preclude me from
11 consulting with others, including analysts or other
12 bondholders, require a compelling justification that has not
13 been shown here. I would refer Your Honor to the First
14 Circuit decision in *Public Citizen v. Liggett*, 858 F.2d 775,
15 including at pages 789 to 790.

16 Even with respect to non-confidential documents, the
17 debtor would preclude access by public analysts and the media,
18 even to the nonconfidential documents, even to the index. The
19 debtors' argument is that allowing access by public analysts
20 and the media supposedly could overload the depository, but
21 that claim is conclusory and speculative. Nothing specific
22 has been shown.

23 Indeed, if there's a hundred thousand plus people
24 entitled to access, and the access is so loosely controlled,
25 as Mr. Rosen has described, it's all the more reason that the

1 public analysts and media should not be precluded from the
2 non-confidential portion of the depository.

3 And this affects me and other bondholders, because
4 public analysts and media could dig in, analyze and highlight
5 what is in the non-confidential documents, providing their
6 analysis, highlighting what is most significant.

7 Second, on the proposed notice, I listened to Your
8 Honor's comments at the outset this morning, but,
9 respectfully, I do not believe Your Honor's changes fully
10 address the problem I raised. Unless individual bondholders
11 are given the opportunity to participate in the ECF system,
12 they will still be unfairly deterred from objecting by being
13 faced with overly burdensome service requirements.

14 I have proposed several alternative simplified
15 procedures for objection that will result in all parties in
16 the CM/ECF system receiving notice of all objections upon
17 their docketing, and I'd ask Your Honor to take a look at that
18 in my submission.

19 Third, I have standing as a party here to object to a
20 protective order --

21 (Sound played.)

22 MR. HEIN: -- and to depository access procedures
23 that will affect me -- may I just wrap up, Your Honor?

24 THE COURT: Yes, you may.

25 MR. HEIN: Thank you.

1 Debtors are proposing a plan in which the amount I
2 receive will be affected by the votes and decisions of other
3 individual retail investors. I am, thus, impacted by measures
4 that discourage acts of participation by other individual
5 retail investors.

6 And, respectfully, even apart from my standing, the
7 Court itself obviously, and I'm sure Your Honor recognizes
8 this, has a responsibility to ensure there's a practical means
9 by which individuals can participate and object, and to ensure
10 that information is not concealed behind a curtain, the
11 depository access restrictions, in an overly broad protective
12 order.

13 Thank you very much, Your Honor.

14 THE COURT: Thank you, Mr. Hein.

15 And now Mr. Mudd for two minutes.

16 MR. ROSEN: Your Honor, this is Brian Rosen.

17 Mr. Mudd sent me an e-mail early this morning saying he was
18 having some issues and may not be able to log on. I don't
19 know if he's been able to.

20 THE COURT: Ms. Ng, has Mr. Mudd logged on?

21 MS. NG: Judge, hold on one second. Just let me take
22 a look.

23 THE COURT: Thank you.

24 MS. NG: I don't think I had him on before. Let me
25 look again.

1 MR. SOSLAND: Your Honor, Martin Sosland. Mr. Mudd
2 e-mailed the other objectors that he would not be able to log
3 on and any of us could have his time, but I believe we've all
4 spoken.

5 THE COURT: All right. So we shouldn't expect
6 Mr. Mudd?

7 MR. SOSLAND: That's my understanding.

8 THE COURT: Mr. Sosland?

9 MR. SOSLAND: Yes. That's my understanding, Your
10 Honor.

11 THE COURT: Thank you very much.

12 So we will return then to Mr. Rosen.

13 MR. ROSEN: Thank you, Your Honor. And I appreciate
14 Mr. Sosland bringing up *Enron*, because *Enron* was one of the
15 cases that I was referring to. And Mr. Sosland and I were
16 partners at that time, and we did formulate with others these
17 data room procedures. And he's correct, they were in the
18 context of the confirmation hearing.

19 And what we thought was we would start the process
20 sooner, because we want people to have as much of an
21 opportunity to review whatever information is available as
22 soon as possible, and not do it subsequent to the approval of
23 the Disclosure Statement, hopefully June 29, or shortly
24 thereafter.

25 So, yes, we are looking to start the process, the

1 data room now, and it would flip over to a so-called
2 confirmation data room. And some additional information may
3 become available. Some may be that no additional information
4 is available.

5 But to Mr. Sosland's comment, we will be laying a lot
6 of these things out, Your Honor, in the motion that we filed
7 for approval of the Disclosure Statement, and for procedures
8 associated with discovery and getting us from a disclosure
9 statement hearing to a confirmation hearing.

10 With respect to Ms. Miller's comments, and perhaps I
11 misunderstood the Court's comment earlier about paragraph
12 seven, because in taking my notes, Your Honor, I noted that
13 you would -- you were fine if, in fact, there was some degree
14 or statement with respect to authenticity of the documents.
15 But you were also okay that, to the extent that the Oversight
16 Board did not prepare any of those documents, it would not be
17 repping or warranting as to the accuracy of the information.

18 But so to the extent that they were developed by the
19 Commonwealth, or PBA, or someone else, Your Honor, we would
20 gladly put them in. But we, as the Oversight Board, cannot
21 rep and warranty as to what their accuracy might be.

22 With respect to the folders, Your Honor, we do have a
23 sense of what the general folders are, but I got the sense
24 from Ms. Miller that she was looking for a separate
25 description of each and every document. And that's just not

1 going to be possible, because there are so many documents that
2 are going to go into this, and they've noted already the sheer
3 size of this, that to do that, Your Honor, we might as well
4 just not do the data room and just say, come and get them,
5 here they are, pick them up on a street corner.

6 That doesn't make sense, and that would overburden
7 everybody. And it really is not consistent with what we're
8 trying to do, which is to streamline the process. And I would
9 also note that Ms. Miller here is taking a quantum leap, as
10 she has often done here, as to what is actually involved for a
11 Disclosure Statement hearing. And as we indicated in our
12 reply, Your Honor, most of what is referenced in the Ambac
13 response, and perhaps one or two of the others, are not
14 disclosure statement materials. They are not necessary for a
15 disclosure statement.

16 And Your Honor is well aware of what the standard is
17 for approval of a disclosure statement, and it's not drilling
18 down to the level that Ambac is looking to do. Everybody's
19 focused, Your Honor, and they've thrown out, and as certainly
20 Mr. Amend did and his colleague did, about the deadlines are
21 not binding. Deadlines are too short. They shouldn't be
22 stressed about them, and nor should they be put into a bind
23 about them. But clearly some of the people involved in this,
24 Your Honor, while they say they're happy to have a Disclosure
25 Statement hearing go forward, their goal is not to have a

1 confirmation hearing go forward in the time frame that we are
2 looking to do it. Their goal is to delay the process.

3 And their comments about the data room and the
4 exercise that they think should be done, or the documents that
5 they think should be put into these data rooms, are clear
6 examples of their effort to delay the process.

7 We are happy to put in whatever we can put in, Your
8 Honor. We are pleased to put in folders, to the extent that
9 we can generically describe what are in those documents -- in
10 those folders, Your Honor. And we're happy to be recipients
11 of --

12 THE COURT: Mr. Rosen.

13 MR. ROSEN: -- additional discovery requests --

14 THE COURT: Mr. Rosen.

15 MR. ROSEN: -- and deal with what those discovery
16 requests are --

17 THE COURT: Mr. Rosen, I'm breaking my rule and
18 interrupting you. So can you give us a concrete example of
19 the level of specificity or generality with which you intend
20 to label folders?

21 So, for instance, are you going to say, one folder is
22 financial information, one folder is bank records? Or are you
23 going to be more particularized than that?

24 MR. ROSEN: We're trying to be more particularized,
25 Your Honor. An example would be factual source material and

1 raw data, underlying Disclosure Statement. Another would be,
2 approximate creditor recoveries and allocations. A third
3 might be certain public employee collective bargaining
4 agreements. A fourth would be dairy producers, so on and so
5 on, Your Honor. Trying to relate them, to the extent
6 appropriate, to some of the classifications which are set
7 forth in the Plan and will be detailed in the Disclosure
8 Statement, and some underlying source material as well.

9 THE COURT: Well, I suspect the more general they
10 are, the more quickly you're going to be getting requests for
11 specific types of things, so that three weeks aren't spent
12 trying to figure out whether some things are a terabyte of
13 information or 17 terabytes of information. So I think that
14 efficiency will be best served by your categorizing things as
15 specifically as possible so that those who are considering
16 discovery requests can make a meaningful look in an efficient
17 way for what's in there.

18 MR. ROSEN: We certainly will do our best, Your
19 Honor, to be as specific as possible, yes.

20 Your Honor, lastly, with respect to Mr. Hein's
21 comments, I think that we have addressed many of these before,
22 and I don't think there's any need for any further argument
23 with respect to those, as our papers, I believe, set forth our
24 position.

25 THE COURT: Let me go back to just a couple of

1 things. So we talked about 28 days from the date of filing,
2 which in ECF is service of what's filed, to the extent people
3 are on ECF. Mr. Despins points out that the Rule is 28 days
4 from service.

5 I didn't ask him to elaborate there on the -- any
6 material difference that he sees in the effect as to when the
7 period starts running, but will you comment on that? What's
8 your understanding?

9 MR. ROSEN: Your Honor, we think, based upon the
10 sheer size of this and getting Prime Clerk to do what's
11 necessary, which would be the preparation of all materials,
12 including the computer sticks that will be used for this
13 process, we would hope that the Court would establish that
14 it's 28 days from the filing on ECF. And we certainly will
15 endeavor to mail things as quickly as possible from that date.

16 One of the things that the Court should consider also
17 is that there are some people who will be asking for a Spanish
18 translation of this. And in the past, Your Honor, that has
19 lagged a little bit. We have tried to remain current with all
20 the changes in the Disclosure Statement, but as we continue to
21 finalize the definitive documentation in the Plan of
22 Adjustment, and, therefore, the corresponding Disclosure
23 Statement, there will be some additional changes necessary to
24 go from English to Spanish.

25 So we're hoping, Your Honor, that we focus -- and the

1 Court does have the ability to limit it to 28 days from the
2 filing, and we hope the Court would do that, because
3 otherwise, Your Honor, there's no way that we could make the
4 time frame that we've already discussed.

5 THE COURT: How much time is Prime Clerk going to
6 need to get everything out? I think we have to at least build
7 that period of time in.

8 MR. ROSEN: Yes, Your Honor. And I apologize. I
9 have not had that direct communication. I don't know if
10 Mr. Ma is on the phone and could answer that question, or
11 Ms. Stafford, or Ms. Alonzo?

12 They may be on listen only lines, Your Honor. Well,
13 Ms. Stafford is not.

14 THE COURT: Ms. Stafford was on a live line.

15 MR. ROSEN: Right.

16 MS. STAFFORD: Pardon me, Judge. This is Laura
17 Stafford of Proskauer on behalf of the Financial Oversight and
18 Management Board. My understanding is about five to six days
19 for Prime Clerk to complete service.

20 THE COURT: So we need to have the 28-day period run
21 from service.

22 MR. ROSEN: So, Your Honor, that would mean that we
23 would need to push back to the 29th, most likely.

24 THE COURT: Yes. Yes. I'll have to look at my
25 calendar and consult the District of Puerto Rico as to the

1 precise days on which the facility would be available to do
2 that.

3 MR. ROSEN: Your Honor, is it -- I apologize for
4 interrupting. Is it the intention of the Court that the
5 Disclosure Statement hearing would be in San Juan?

6 THE COURT: Well, even when we're doing this
7 telephonically, we have a base of operations in San Juan that
8 is in a facility that is otherwise used for other court
9 activity. So I have to make sure of that availability for the
10 court reporter and others who are necessary to this who are in
11 San Juan. I do not expect it to be live. So that is -- if
12 you'll excuse me just one second. Everybody bear with me. I
13 will be back in just a second.

14 Okay. I thank everyone for bearing with me. So I am
15 back.

16 Mr. Rosen, can you hear me? Hello?

17 MR. ROSEN: Yes, Your Honor.

18 THE COURT: Okay. Great. For a second, I thought
19 I'd lost everyone.

20 So I don't have the precise date at the moment. If
21 we're pushing things back for a week, I would hope that we
22 would be able to do it in the following week, which would be
23 the week that follows the July 4th weekend. I don't have a
24 precise date here. I will have to put that -- I guess we can
25 file a notice on the docket of what that would be.

1 You are going to be rewriting the proposed order in
2 accordance with the remarks that I made?

3 MR. ROSEN: Yes, Your Honor.

4 THE COURT: So you'll put a revised proposed order on
5 the docket as well, and then we'll take it from there. So we
6 should be able within the next day or so, and then I can
7 probably -- I may be able to announce it orally tomorrow as
8 well, what the date would be, since it seems we can't do June
9 29.

10 MR. ROSEN: Okay, Your Honor. We will file that on
11 the docket and send it down to the Court as well.

12 THE COURT: Very good. So just to be clear, I'll do
13 a little oral ruling.

14 This is the Court's oral ruling on the Oversight
15 Board's Motion to Set a Hearing for Consideration of the
16 Disclosure Statement for the Third Amended Title III Joint
17 Plan of Adjustment of the Commonwealth of Puerto Rico, as well
18 as related briefing deadlines and other procedures, which is
19 docket entry no. 16332, as modified by the Amended Proposed
20 Order and exhibits that were attached to docket entry no.
21 16507, which is the motion.

22 I've reviewed the pleadings carefully and listened
23 carefully to the arguments today. As I indicated earlier, I
24 found that the Oversight Board did not show adequate reason
25 for shortening the 2002 notice period. So the Court's ruling

1 is that the 28 days notice shall be provided, and that will
2 run from date of service, which will be approximately a week
3 after the date of filing.

4 The Court also found that the proposed requirement
5 for service of objections separately from filing by -- and by
6 a mix of mail and e-mail on the entire master service list and
7 others, imposes an undue burden on objectors. So the Court
8 has ruled and the Oversight Board has agreed that separate
9 service requirement for objections will be in accordance with
10 the Case Management Order.

11 The paragraph seven will be rewritten to narrow
12 disclaimers as to the accuracy of third-party information.
13 There had been concerns expressed about timely access. The
14 Oversight Board's counsel has explained that there will be
15 very prompt ease of access to the data room, and that is a
16 sufficient response to that objection.

17 So the proposed order will be revised by the debtor
18 to adopt the briefing and hearing schedule that had been
19 described, which is 28 days notice of the objection deadline
20 from the service of the approval motion, two weeks for the
21 reply by the Oversight Board, and a hearing two weeks after
22 that. The Court will inform the parties of a date that is
23 available and consistent with the time frame after June 29.
24 The provision will be added that persons and entities that
25 have filed timely objections will be entitled to make oral

1 remarks in opposition at the hearing. The objections are
2 otherwise overruled.

3 MR. ROSEN: Thank you, Your Honor. We will submit an
4 order.

5 THE COURT: Thank you very much. All right then.

6 The next item on the Agenda is the UCC's Motion to
7 Schedule a Hearing on a Renewed Rule 3013 Motion, and that is
8 docket entry no. 16397 in case no. 17-3283.

9 I have first Mr. Despins for eight minutes.

10 MR. DESPINS: Yes, Your Honor. Good afternoon again.
11 Luc Despins -- for the record, Luc Despins with Paul Hastings
12 on behalf of the Committee.

13 Your Honor, this is a scheduling motion. This is not
14 the 3013 motion. So at least in the opening remarks, I intend
15 to be fairly brief.

16 The way we recall the hearing in April of last year
17 actually was that the date was not as to whether this would be
18 heard at confirmation or the Disclosure Statement hearing, but
19 rather whether it would be heard prior to the Disclosure
20 Statement, or at the Disclosure Statement hearing. But the
21 Court did not -- to be clear, the Court did not issue any
22 final rulings on that. But the comments were of that nature.
23 And that's why we believe today that that's the same issue.

24 We did say at the time, and we're saying again, that
25 we are okay with having this heard at the Disclosure Statement

1 hearing. But we firmly believe that the best thing for the
2 case, for all sorts of reasons, is to have it heard before,
3 particularly now that there's plenty of time to have that
4 motion be heard on its own -- well, subject to the Court's
5 availability, of course. But there's plenty of time to have
6 it heard long before the disclosure statement objection
7 deadline.

8 And because you can imagine, you know, that there's
9 going to be millions of dollars spent preparing -- not by us,
10 but just generally across the board, spent preparing
11 objections, et cetera, discovery, and that if for some reason
12 the Committee is found to be correct on this issue, that all
13 of that would be obviated if there's a prior ruling by the
14 Court. So the Retiree Committee and the Oversight Board
15 really spent a lot of time in their objection addressing the
16 merits.

17 I think also the Oversight Board said, wait a minute,
18 he shouldn't be allowed to go forward until he answers the
19 questions we pose. And, of course, the questions that they
20 pose but never briefed. And we don't believe that's the case.
21 But in any event, we've addressed a lot of that in our reply.
22 But, you know, at this point, I would -- I would be inclined
23 to pause and to reserve time for reply, obviously relying on
24 our -- on the reply we filed, and also to address any
25 questions the Court may have, because this is just a

1 scheduling motion at this point.

2 And, of course, I would reserve all my time for the
3 reply.

4 THE COURT: All right. We will do that. I was not
5 unfortunately clocking you on that, and so I will leave it to
6 my time master to note the amount of time, additional time
7 that you have reserved for your reply, and proceed
8 accordingly.

9 So next is Mr. Bienenstock, for the Oversight Board.

10 MR. BIENENSTOCK: Thank you, Your Honor. Good
11 afternoon once again. Martin Bienenstock at Proskauer Rose,
12 LLP, for the Oversight Board. I think I can be extremely
13 brief on this. The point of agreement among the parties, and
14 I think the Court as well, is that something that would
15 blatantly make the plan unconfirmable if the matter -- if it's
16 a matter of law, is preferable to be decided before the plan
17 is sent out for voting, et cetera.

18 So we've never had an issue with that type of
19 resolution, and I think Your Honor structured it -- Your Honor
20 actually called it a structural issue, is there no set of
21 facts under which this classification could be legal, and we
22 think that is a perfect way to articulate the issue.

23 And we have no problem dealing with that in advance,
24 whether in advance of the Disclosure Statement hearing or at
25 the hearing. And I think I'm in agreement with Mr. Despins

1 that subject to the next thing I'm going to say, if that's
2 satisfied, let's tee it up as quickly as possible, consistent
3 with the Court's schedule.

4 Where we differ, and I don't know why the Committee
5 has been playing this cat and mouse game, is before we have a
6 hearing and the Court is asked to rule, that there will be a
7 hearing on the classification issue of the Retiree claims on
8 the one hand and the General Obligation Bondholder claims on
9 the other hand. There ought to be a showing that it is
10 possible in the real world for us to put Retiree claims in the
11 same class as bond claims.

12 And as I explained when this first came up at I guess
13 with the first 3013 motion, since Retirees -- since there is
14 no fund anymore, the Commonwealth has to pay the pensions
15 basically out of pocket. The Retiree claims are paid monthly
16 for the life of the retiree, and I suppose sometimes a spouse,
17 but basically they are monthly claims tethered to the lifetime
18 of the retiree.

19 And bond claims are paid untethered to any lifetime.
20 It's an amount that you pay on behalf of a certain amount of
21 the bond claim. They are different treatments inherently.
22 Section 1123 of the Bankruptcy Code, as incorporated into
23 PROMESA by section 301(a) is not allowing one class -- for you
24 to treat claims differently. So I asked the first time the
25 Committee raised this, how can that be done? And I think the

1 Court asked Mr. Despins to be prepared to address that.

2 They didn't address it in their pleading. I e-mailed
3 Mr. Despins. He didn't respond. And now they say we didn't
4 brief it. Well, I don't know what more they're waiting for
5 than the explanation I gave many months ago at the 3013
6 hearing, and that now I've given a second time and that --
7 well, a third time, because we put it again in our answering
8 pleading for this hearing.

9 So bottom line, we respectfully submit, if and when
10 the Committee shows the Court that there is a way the Court
11 can order that relief, a practicable, doable way such that if
12 he's entitled to that relief, he can get it, then let's
13 schedule the hearing and get it done on or before the
14 Disclosure Statement hearing. But so far, we had no answer to
15 the question.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 Representative of the Retiree Committee, I have Ms.
19 Root's name down, but that may have changed.

20 MR. RAIFORD: It has, Your Honor. Landon Raiford.
21 I'll be playing the role of Ms. Root today. Jenner & Block
22 for the Retiree Committee, for the record.

23 THE COURT: Good afternoon, Mr. Raiford.

24 MR. RAIFORD: Good afternoon. The Retiree Committee
25 agrees with the Board that as we stand today, the scheduling

1 motion should just be denied. And we also appreciate the
2 Board presenting kind of an alternative, a compromise solution
3 regarding scheduling. And, frankly, if the UCC were truly
4 raising a purely structural classification issue, we would
5 perhaps support this proposed alternative schedule.

6 The problem, however, is that twice now the UCC has
7 failed to present such a narrow legal issue for consideration.
8 Instead, they've once again decided to present this Court with
9 an unfair discrimination claim loosely dressed in
10 classifications clothing. The UCC should not get a third
11 opportunity to correctly tee this issue up prior to plan
12 confirmation. And so we ask that the Court deny the
13 scheduling motion, and also deny the Rule 3013 motion again
14 without prejudice.

15 The UCC argues that the scheduling motion simply
16 seeks a hearing on a narrow classification issue, but it is
17 whether any plan were separately classified general unsecured
18 and Retiree claims under *Granada Wines*; but for the second
19 time, they fail to analyze the very classification test they
20 claim controls. Whether the "legal character" -- every
21 separately classified claim is different. The UCC makes no
22 effort to explain how Retiree pension claims are legally
23 indistinguishable from a trade creditors claim, which is what
24 they must show to present it under a Rule 3013 motion.

25 But it doesn't take much to see that retired pensions

1 are markedly different from general unsecured claims.

2 Pensions are paid pursuant to a myriad of rules related to
3 tenure, job classification and the like. They are paid over
4 the course of decades and terminated upon the passing of the
5 retiree.

6 These types of claims are on their face,
7 fundamentally different from, for example, a tax refund claim,
8 which is a type of claim held by one of the UCC's members, and
9 the statutory construct for these claims that trade pensions
10 -- the character of the claim legally indistinguishable from
11 those of general unsecured creditors. And, quite frankly, so
12 is PROMESA, which mandates that the plan provide adequate
13 funding for pension costs.

14 The UCC, in its reply, and again today, trusted the
15 cover of silence on this issue, but they did not need to
16 preemptively address objections to the motion. But this is
17 not that. Instead, what the Court is faced with, that -- the
18 party line and purported test that provided no analysis that
19 recalling -- the line is not satisfied here. The issue is not
20 one of preemptively addressing defenses. It is a failure to
21 address a prima facie case.

22 What is clear, and, frankly, what the UCC makes
23 explicit in their papers, is that the true concern is not
24 whether unsecured claims must be lumped into one giant class.
25 If they were, they would be arguing for that classification

1 for all unsecured creditor classes. It is not making that
2 request --

3 (Sound played.)

4 MR. RAIFORD: -- because the UCC's argument is, to
5 quote them, the general unsecured creditors are entitled to
6 the same treatment as and must receive no less than Retirees.
7 For the reasons stated in our brief, there's a confirmation
8 objection. They should not be heard now.

9 In sum, the UCC took this Court's guidance a year ago
10 concerning a petition crafting and litigating a true
11 structured classification argument in connection with the
12 Disclosure Statement hearing, and instead filed a routine that
13 they had done before. They should not be given a third
14 opportunity to try and get it right.

15 Maybe the current theme of this Omnibus Hearing is
16 the enemy of us all, time, and the fact that there is never
17 enough of it. Your Honor has reminded us that your time is
18 finite, to be practical, to try and address any and everything
19 the parties would like clarity on now. Of course, maybe there
20 are some one-off litigation issues that may be necessary.
21 This, however, is not one of them. And the Retiree Committee
22 requests that the Court deny the motion.

23 Thank you.

24 THE COURT: Thank you, Mr. Raiford.

25 So now we return to Mr. Despins, but before you

1 speak, Mr. Despins, let me put something out there. It seems
2 to me that this is a problem, that even a year out, no one
3 really knows how you will be dealing with, you know, the
4 question of the differential and satisfaction methodology,
5 basis of confrontation, the ultimate amount to be paid out on
6 the Retiree claims in connection with the classification.
7 Then, as a resource allocation/practical matter, even if I do
8 cue up hurried briefing, and even with the now 28-day plus
9 service or 28 days after service schedule for the objections,
10 there is still likely to be a great deal of work that people
11 are doing in aid of crafting those objections to the
12 Disclosure Statement before the ruling on the motion.

13 It also seems to me that if this is a serious motion
14 on a serious legal issue, not a factual issue, in connection
15 with whether we should go forward on the proposed Disclosure
16 Statement, it can be raised and briefed as part of your
17 objection to the Disclosure Statement, at which point you
18 would clearly have to say why it is that the classification as
19 described in this particular Disclosure Statement could never
20 be legal, notwithstanding the characteristics that have been
21 identified. The Oversight Board may well, you know, front yet
22 again why it is it believes the classification is appropriate
23 in its motion for approval of the Disclosure Statement.

24 So my inclination is to deny the motion for separate
25 briefing, to have this heard as part of the Disclosure

1 Statement evaluation, and briefed as part of the Disclosure
2 Statement briefing rather than separately. So with that,
3 Mr. Despins --

4 MR. DESPINS: Okay. Thank you, Your Honor.

5 Your Honor, I don't know if people refuse to look at
6 the pleadings. Our Reply in footnote 21 provided one basic
7 answer to the question, which is when Mr. Bienenstock is
8 saying, hey, we are giving them a monthly stipend for life,
9 that's their treatment. How can you give the same treatment
10 to the others?

11 But that begs the question, if the answer to
12 classification was always, hey, we want to provide them
13 different treatment, therefore, it's okay to classify them
14 separately, well, the classification argument would become a
15 joke. That's all in footnote 21. That's just one argument.

16 And the reason why we didn't think we had to brief
17 that is because that's just one argument they'll make.
18 They've never briefed the issue. But every claim, Your Honor,
19 is accelerated on the petition date. So this argument that
20 the Retirees have a right to a stream of payment, yes, that
21 was their state law right or state law -- or territory law
22 right. The same way that trade creditors or tax claimants had
23 a right to receive a tax refund, that was their territory law
24 right. It may be subject to conditions. It may be payable
25 over time, but that doesn't changes the character of the

1 claim.

2 The First Circuit has spoken very clearly about what
3 character of the claim means. It means do you have priority
4 or not. Do you have different, you know, different rights as
5 a creditor, vis-a-vis the obligor. And the answer in this
6 case is no. And that's all we needed to prove in our opening
7 brief. But nevertheless, we added the argument on footnote 21
8 of the reply that basically explains that, which is it would
9 be so easy just to say, well, I want to pay them over time,
10 and these guys, they're not going to pay over time.
11 Therefore, I win the classification argument. That would be
12 insane.

13 So, you know, if Your Honor wants all this to be
14 heard at the Disclosure Statement hearing, fine. But we think
15 that that could turn out to be wasteful from the point of view
16 of if the Court were to agree that separate classification is
17 required, or, sorry, that the common classification is
18 required, then we would have spent an entire -- you know, a
19 lot of time and money on a plan that was dead on arrival.

20 So again, I'm not going to -- I understand, when you
21 usually issue these brilliant rulings, that you generally
22 stick to them, but I wanted to point out to the Court that we
23 did address the issue, even though we didn't have to, because
24 this is an issue that they've never briefed. By the way, in
25 their original brief, there was not a word about that.

1 I know that if we did that, you know, the Court would
2 probably say, hey, you're barred from raising that. But
3 Mr. Bienenstock showed up at the April hearing last year and
4 said, hey, we have another argument, which is this one, but
5 that was never briefed by the Board.

6 So for us to brief anticipatory arguments that they
7 have not fully briefed is not required. But I'm sorry if I
8 sound a little bit indignant, but we did address it, and we do
9 think that it would be preferable for all sorts of reasons to
10 have this heard separately before the Disclosure Statement
11 hearing. But obviously it's Your Honor's call.

12 Thank you very much, Your Honor.

13 THE COURT: Thank you. I guess I'm rather heavy
14 handed with my hints. To the extent that helps people, that's
15 good, and thank you for bearing with it if you find me heavy
16 handed with my hints.

17 I am persuaded that it is more efficient from the
18 resource allocation point of view to have this classification
19 legality issue briefed as part of the Disclosure Statement
20 briefing. So the scheduling motion is denied, and the 3013
21 motion is denied without prejudice to litigation of the issue
22 in connection with the Disclosure Statement briefing and
23 hearing.

24 I do appreciate, Mr. Despins, your pointing to your
25 footnote and arguing, in this context, your response to the

1 point that has been argued by the Oversight Board. I think
2 that that will help to make the briefing of these issues in
3 connection with the Disclosure Statement hearing sharper and
4 clearer for all concerned.

5 So the scheduling motion is denied, and the renewed
6 3013 motion is denied without prejudice to assertion of the
7 arguments in the objection to the proposed Disclosure
8 Statement. Thank you.

9 Next on the Agenda are a couple of contested
10 objections to claims, one of which I think has been withdrawn,
11 but I will let the Oversight Board's representative explain
12 the current state of play with respect to these objections to
13 claims. So, Ms. Stafford -- I'm sorry.

14 MR. DESPINS: Your Honor, I really apologize for
15 interrupting, but it's just -- again, Luc Despins for Paul
16 Hastings for the record. I clearly understand the ruling.
17 I'm not debating it. The only question is the effect of that
18 is that the Board will have the last word on this issue,
19 because we're going to file an objection, they'll file a
20 reply, and, of course, we never saw their arguments.

21 So we would ask to have the right to file a sur-reply
22 on this issue, because we will be briefing in the dark because
23 we don't know, other than the statements made by
24 Mr. Bienenstock -- we never saw any briefing on this issue.
25 That's the only soft request we would have on this issue, only

1 of the 3013 classification.

2 Thank you, Your Honor.

3 THE COURT: You have permission to file a request to
4 file a sur-reply once you've seen the reply, which means
5 you're going to be planning your sur-reply, and you will, in
6 your view, I'm sure, persuade me quite quickly that you have
7 something to say. If you don't, then there may not be a
8 sur-reply.

9 MR. DESPINS: Thank you, Your Honor. I apologize for
10 the interruption.

11 THE COURT: No worries. Thank you.

12 All right. Then number 7 on the Agenda is the 293rd
13 Omnibus Objection to claims, which is docket entry no. 15716
14 in case no. 17-3283. Ms. Stafford, I believe, is presenting?

15 MS. STAFFORD: That's correct, Your Honor. Thank
16 you. This is Laura Stafford, for the record, of Proskauer
17 Rose, on behalf of the Financial Oversight and Management
18 Board.

19 The 293rd Omnibus Objection, this one, Your Honor,
20 was not withdrawn, just to refer back to your previous
21 statement. This objection seeks to disallow in their entirety
22 proofs of claim that assert liability associated with
23 government-issued bonds, but which fail to provide information
24 necessary to enable the debtors to reconcile the claims, such
25 as identification of specific bonds asserted by CUSIP number

1 and amount.

2 We received one response with respect to this
3 objection filed by Helvia Caparros Santos at ECF no. 15856
4 with respect to Proof of Claim No. 17107. In this response,
5 Ms. Caparros Santos makes reference to a UBS account statement
6 as evidence for her alleged ownership of bonds issued by the
7 Commonwealth of Puerto Rico.

8 However, upon review of Ms. Caparros Santos' complete
9 UBS account statement, which debtors' counsel obtained from
10 Ms. Caparros Santos' counsel and attached to our reply, the
11 only Puerto Rico related investments in Ms. Caparros Santos'
12 account are ownership interests in certain mutual funds, which
13 in turn may have invested in bonds issued by the Commonwealth
14 or one of its instrumentalities.

15 For that reason, Ms. Caparros Santos' claim is filed
16 based only on her status as an alleged creditor of a creditor
17 of the Commonwealth, and the debtors respectfully note that,
18 as a result, Ms. Caparros Santos lacks standing to assert that
19 derivative claim against the Commonwealth. So we would
20 request the Court grant the objection and disallow the claim,
21 not withstanding that response.

22 THE COURT: Thank you. I apologize for my misuse of
23 the term "withdrawal", which is not relevant to this
24 particular Omnibus Objection at all. What I was referring to
25 was an understanding that one response to another Omnibus

1 Objection had been withdrawn. You'll tell me whether I'm
2 wrong on that, too, in a minute.

3 First, to rule with respect to the 293rd Omnibus
4 Objection. That is sustained as to claim no. 17107 of
5 Ms. Helvia S. Caparros Santos, and that claim is disallowed in
6 its entirety, because the claimant's response does not dispute
7 that the claimant lacks standing to assert the derivative
8 claim against the Commonwealth and its instrumentalities,
9 since the claim, if any, is derivative of a claim held by a
10 mutual fund, and because she fails to identify the CUSIP
11 number or any other precise identifying information for any
12 bond she may possess.

13 So will the debtor file a comprehensive proposed
14 order disallowing this claim and any others that are resolved
15 by the Omnibus Objection, and if not yet been resolved by an
16 order?

17 MS. STAFFORD: Of course, Your Honor. We'd be glad
18 to. Thank you.

19 THE COURT: Thank you.

20 The next item on the Agenda is the 298th Omnibus
21 Objection, and that's docket entry no. 16018.

22 MS. STAFFORD: Thank you, Your Honor.

23 The 298th Omnibus Objection seeks to disallow in
24 their entirety proofs of claim that have been amended and
25 superseded by subsequently filed proofs of claim. Two

1 responses to this Objection were received, and Your Honor is
2 correct that one of those responses was withdrawn by Baxter
3 Sales last night. That was filed at ECF number -- or the
4 response was filed at ECF No. 16399.

5 And upon reviewing our reply, and further
6 conversations between myself and counsel for Baxter Sales,
7 we've agreed to the resolution of that response, which was
8 withdrawn yesterday.

9 There is an additional response that was filed by
10 Unique Builders, Inc. with respect to ECF no. 16386 -- sorry,
11 filed at ECF No. 16386, and with respect to Proof of Claim No.
12 23832. Subsequent to filing that response, Unique Builders
13 filed a notice of withdrawal of his proof of claim.

14 In its withdrawal notice, Unique Builders stated that
15 there is no controversy, that Claim No. 23832 has been amended
16 and superseded, and that Claim No. 29911 should be deemed
17 allowed as filed. And on that basis, Unique Builders stated
18 that the objection should be denied as moot.

19 And we just wanted to note for the record that the
20 withdrawal notice is not accurate with respect to Claim No.
21 29911. The debtors expressly reserve their right to object to
22 that remaining claim 29911 on any basis whatsoever, but we're
23 otherwise happy to revise the exhibits associated with our
24 proposed order to reflect the withdrawal of the Unique
25 Builders claim.

1 THE COURT: So the Claim No. 23832 has been
2 withdrawn, and so I don't need to rule on an objection to
3 that; is that correct?

4 MS. STAFFORD: That is correct.

5 THE COURT: Regarding the Baxter Sales Claim No.
6 111825, the response to the objection has been withdrawn, so
7 there is no opposition to the objection to that claim; is that
8 correct?

9 MS. STAFFORD: That is correct.

10 THE COURT: Very well then. The objection is
11 sustained as to Claim No. 111825, which is the Baxter Sales
12 and Distribution claim.

13 The debtor is instructed to remove the withdrawn
14 claim of Unique Sales, Claim No. 29911, from the schedule to
15 the proposed order sustaining the objections set forth in the
16 298th Omnibus Objection, and the debtor is directed to submit
17 a revised comprehensive proposed order.

18 MS. STAFFORD: Thank you very much, Your Honor. We
19 will do so.

20 THE COURT: Thank you very much, Ms. Stafford.

21 So it is now five minutes past 4:00, and the next
22 item on the Omni Agenda is oral argument on the Vitol
23 Cross-motions for Summary Judgment, which are allocated 60
24 minutes.

25 I am prepared to go forward with those, assuming that

1 we can finish those within the 60 minutes, unless counsel
2 would prefer to take those up tomorrow morning instead since
3 it has been a long day. So I guess I will ask Ms. Dale for
4 PREPA and Mr. Kaplan for Vitol to unmute themselves so that
5 they can talk to each other and me about whether they want to
6 get started this afternoon or tomorrow morning.

7 MR. KAPLAN: Good afternoon, Your Honor. It is Alex
8 Kaplan of Susman Godfrey on behalf of Vitol, Inc., and Vitol,
9 S.A. We are prepared to proceed today, Your Honor. However,
10 we, of course, are at the Court's pleasure. If the Court
11 believes that proceeding in the morning instead would allow
12 more time to have any questions the Court may have answered,
13 we're happy to do that. We are, as I said, at the Court's
14 pleasure.

15 THE COURT: Thank you.

16 Ms. Dale.

17 MS. DALE: Good afternoon, Your Honor. Margaret Dale
18 from Proskauer Rose for the Oversight Board. We are also
19 prepared to go forward today, but, again, as Mr. Kaplan said,
20 we're really -- whatever the Court's pleasure.

21 THE COURT: I think it's best to have a little bit
22 more flexibility in terms in responding to my questions, and
23 so we will adjourn the Omni Hearing now and commence tomorrow
24 morning at 9:30 with the argument on the Vitol cross-motions.

25 I appreciate your willingness to go forward this

1 afternoon, but I think it's better, because of my schedule,
2 not to rush this. Then that will be followed by the argument
3 on the Hernandez Montanez Preliminary Injunction Motion.

4 MR. KAPLAN: Thank you, Your Honor.

5 MS. DALE: Thank you, Your Honor.

6 MR. KAPLAN: It's Alex Kaplan, Your Honor. May I
7 just raise one question so that we're prepared for the
8 argument in the morning?

9 THE COURT: Yes.

10 MR. KAPLAN: Thank you, Your Honor.

11 During your preliminary comments this morning, Your
12 Honor, you identified four issues that you thought would be
13 useful for the parties to focus on. I believe the third issue
14 you raised was the question, the extent to which Law 458
15 applies?

16 THE COURT: Yes.

17 MR. KAPLAN: To the extent the Court would be
18 inclined, perhaps the Court could just indicate what issue the
19 Court is inquiring about there. It would be appreciated, and
20 we might be able to direct our argument with a bit more
21 clarity in the morning.

22 It's unclear if that's the issue of repeal of some of
23 the remedy provisions that were briefed, or whether the Court
24 is asking about something different. Thank you.

25 THE COURT: Thank you. It is not that issue. As I

1 recall, it is a combination of the question of whether the
2 elements of the crime of conviction map onto the concept of
3 aggravated misappropriation under Puerto Rico law, and I think
4 it's also whether and to what extent, if the alter ego
5 classification is not applicable, Law 458 would apply to the
6 different Vitol entities.

7 I think that's what's underlying this. I'm sorry. I
8 did the summary a while ago, and I had lots of other issues in
9 my head this morning. I am going to ask that my law clerk,
10 Mr. Foster, unmute himself if I have forgotten something
11 fundamental to that particular inquiry right now and tell us,
12 since he knows.

13 MR. FOSTER: Your Honor, that is precisely right.

14 THE COURT: Okay. Thank you. So --

15 MR. KAPLAN: Thank you, Your Honor.

16 THE COURT: -- now you have clarification.

17 MR. KAPLAN: Thank you very much, Your Honor. I
18 appreciate it. Thank you.

19 THE COURT: Thank you. Thank you, all.

20 MS. DALE: Your Honor.

21 THE COURT: Yes, Ms. Dale.

22 MS. DALE: I'm sorry to interrupt. Just before we
23 break, I was looking at the Agenda that was filed yesterday
24 and it seems that it has myself going first. But I think
25 Mr. Kaplan intended to go first, and I was to go second. So I

1 just wanted to make sure that that was understood and that was
2 all right with the Court.

3 THE COURT: Thank you. That wasn't understood. That
4 is all right with the Court, if that's what you've agreed.

5 Mr. Kaplan, do you know now how much time you would
6 want to reserve for rebuttal?

7 MR. KAPLAN: Yes, Your Honor. We had anticipated
8 using 25 minutes in the opening presentation and five minutes
9 for rebuttal. And then for our presentation, my colleague,
10 Michael Kelso, will be making arguments on the liability
11 issues, and then I would be addressing certain remedy issues.
12 Of course, we will be tailoring our presentation in light of
13 the Court's comments, but if we can reserve five minutes for
14 rebuttal, we would appreciate it.

15 THE COURT: All right. Certainly. Thank you very
16 much for giving us that advance notice.

17 So once again, thank you. Everyone have a good, safe
18 evening, and I look forward to reconvening tomorrow morning at
19 9:30. We are adjourned.

20 (At 4:11 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 159 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 April 28, 2021.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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